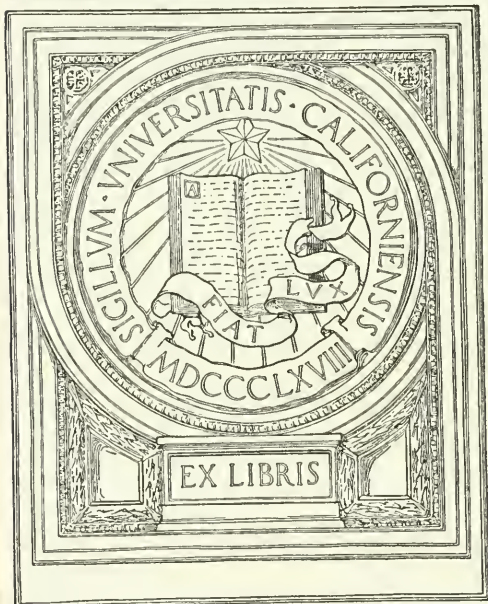




UNIVERSITY OF CALIFORNIA
AT LOS ANGELES



ROBERT ERNEST COWAN



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Some particulars of
An Official Crime.

COMMENTARY
On Secretary Root's

MEMORANDUM

in re

The Elephant Butte

Dam Project.

See pp 74, and 104-110

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RESOLUTION passed at an Extraordinary General Meeting of the stockholders of the Rio Grande Dam and Irrigation Company (The "Elephant Butte Dam" Company.)

"THE SECRETARY read a copy of Dr. Boyd's communication to Lord Winterstoke *in re* the present status of the "Elephant Butte Suit," and commenting upon the "Memorandum" signed by the Secretary of State and transmitted by the British Ambassador to Washington to the British Government; and on motion duly proposed and carried it was—

RESOLVED that the Secretary be and he is hereby ordered to have printed five hundred copies of Dr. Boyd's "Commentary" on Secretary Root's "Memorandum," or statement of case for the United States, in response to the demands of the British Government that the rights of the English investors in the "Elephant Butte Enterprise" be referred to the Hague Tribunal for adjudication; and that copies of the said "Commentary" be forwarded to the President of the United States, to the Hon. the Secretary of the Interior and to other Departmental officials, to prominent members of the Senate and House of Representatives, to the Editors of the principal public journals of this country, and to other influential public men and citizens who are striving to overcome lawlessness in the conduct of our National affairs."

COMMENTARY

ON THE

Elephant Butte Dam Project.

MY DEAR LORD WINTERSTOKE:

Secretary Root's "Memorandum," so called, or statement of the case for the United States, *in re* the petition of the holders of the Debenture-bonds, issued by the Rio Grande Irrigation and Land Company, Limited, praying that their rights be referred to the Hague Tribunal for adjudication, is such a flagrant misrepresentation of the true facts of the case, such a dishonest and puerile answer to the facts set out in the said petition—as presented by His Majesty's Ambassador at Washington, and it so completely reveals the official bad faith and utter disregard for even the elementary principles of justice and public decency, that inspired the inception of the Elephant Butte suit, so called, and that has been responsible for its main-

tenance during the past eight years and more, I fear you will infer that there can be no logical grounds for my oft repeated contention that if the real facts of the case can, by any means, be brought to the personal notice of President Roosevelt "Justice will be done."

Of course, it is admittedly obvious that Mr. Root's "Memorandum" is entirely in keeping with the other Departmental documents, relative to the case, that, from time to time during the past years, have emanated from the General Government at Washington; but such fact does not necessarily disprove my contention that President Roosevelt (who, perforce, must trust largely to the advice of his cabinet officers, as they in turn must depend upon that of subordinate officials in their respective Departments) cannot have any knowledge of the ulterior motive that prompted the institution of the suit, or the brazen manner in which the courts have been prostituted^{ed} in behalf of General Anson Mills' "International (El Paso) Dam Scheme."

During the past year the press of this country has been filled to overflowing with horrifying exposures of crookedness in high places. The revolting revelations in respect to our great financial and industrial institutions, and to the vast extent of political graft that obtains in our official circles, have been truly appalling, and of a character to make the most optimistic of our honest and thoughtful citizens well-nigh despair of the ultimate attainment of our assumed destiny as a Christian people.

But, as a well known English writer recently pointed out, the American people *en masse* should not be judged by the conduct of the "boodlers" in and out of office. The political and commercial corruption that so widely exists at the present time is not, in the main, an index of American character. As Mark Twain, in his preface to "The Gilded Age," long ago declared, "A vast majority of the people are straight-forward and honest, and this sort of thing is stirring them into action." The stirring up process has been going on these many years, but the bulk of our people have been too closely engaged in developing our boundless natural resources to permit of their watching with vigilant eyes the Machiavellian methods of our venal politicians and unscrupulous "Captains of Industry." Now, however, the public conscience, so long dormant, is fully aroused, and, D. V., the power of the political grafter will soon be a thing of the past. Our salvation lies in the fact that our honest citizens, and they are in a large—a very large majority, have become intolerant of official wrongdoing and mismanagement. Just as the public corruptionists are not representative of the American people as a whole, so, likewise, the men responsible for the immoral inception and the irregular maintenance of the Elephant Butte suit are not representative of our national Government *per se*.

The origin of the Elephant Butte suit (and of the plot to rob the people of New Mexico and the English investors in the Elephant Butte enterprise) was clearly es-

tablished by the findings of the Supreme Court of New Mexico in 1897. The suit was shown to be the outcome of General Anson Mills' unscrupulous efforts to clear the way for his International (El Paso) Dam Scheme. A scheme that was conceived in infamy and that has been supported by official fraud. A scheme that if it had not been defeated, by my memorials to the Senate and my many arguments before the Congressional Committees, would certainly have been carried out, and thereby have made many millions of dollars for its promoters.

General Anson Mills and his associates laid their plans, to loot the Federal Treasury and to rob the people of New Mexico and the English investors in the Elephant Butte enterprise, with the consummate craft of their kind. An artfully worded, and seemingly innocuous Concurrent Resolution was "lobbied" through Congress, ostensibly to provide for an investigation of the problems arising out of the occasional changes in the course of the Rio Grande, below El Paso, Texas, caused by torrential floods and consequent avulsions; the necessary political "wires were pulled," and General Anson Mills was appointed "Commissioner," for the United States, of the "International (Water) Boundary Commission;" and a mass of inspired and misleading reports were ~~re~~presented to Congress and to the Department of State; all with the ulterior object of committing the General Government to the construction of the proposed "International" dam, under a treaty with Mexico, whereby the lands of the El

Paso valley would receive *free* water, at the expense of the United States in general and of New Mexico in particular.

As a means of furthering their nefarious scheme, General Anson Mills and his co-conspirators caused bogus claims (amounting in the aggregate to over \$35,000,000.00), against the United States, to be presented by the Mexican Minister at Washington. These claims were assumed to be based upon alleged damage to the farming interests on the Mexican side of the Rio Grande in the El Paso valley.

General Anson Mills, as "Commissioner," for the United States, "investigated" the claims (claims filed at his instance, be it remembered), and in his reports to Congress and to the Departments he warmly championed Mexico's (inspired) pretensions in the premises. He alleged that such claims were warranted because of the large use of the waters of the Rio Grande for irrigation in New Mexico and Colorado.

Since this country's war with Mexico, our General Government has endeavored, in every way possible, to encourage friendly relations with the Mexican people; and, as General Anson Mills, our own "Commissioner," so strenuously espoused the (alleged) Mexican cause, Federal engineers were ordered to determine if a large storage dam could be built in the El Paso canon, and if the construction of a dam and storage reservoir, such as was proposed by General Anson Mills, would be a satisfactory means of

settling the alleged "International" question.

Unfortunately for General Anson Mills' scheme, the report of the Government engineers was not altogether satisfactory. In the first place, the engineers in charge failed to find suitable bed rock for the foundation of a dam of the magnitude proposed; and, in the second place, it was found also that, during years of exceptional drought, the flow of the Rio Grande would not suffice for our reservoirs (100 miles) above, and for the proposed "International" reservoir at El Paso, Texas.

It is true that our plans provided for the irrigation of the El Paso valley, as well as for the valley above in New Mexico, but we intended to charge the farmers, both above and below El Paso, an annual water rent, for every acre irrigated, without discrimination in favor of one locality as against another; while the promoters of the "International" dam project were scheming to obtain *free* water for their land. FREE WATER, at the expense of the United States Government, with a PRIOR right to the waters of the Rio Grande flowing from American soil, to be guaranteed by treaty with Mexico.

Manifestly, with *free water* from a great "International" reservoir under government control, and, in years of drouth, if any, with a prior water right, guaranteed by "International" agreement, such lands would be far more valuable than would be any other irrigable lands in this country.

The area of irrigable lands in the El Paso valley

probably exceeds 140,000 acres, and, as the owners were for the most part poor Mexicans, it is reasonable to assume that the promoters of the "International" dam scheme controlled, or saw their way to control, a greater part of it. Be this as it may, it is well known that one of General Anson Mills' associates (Mr. Max Weber, of Juarez, Mexico) admitted that he owned 40,000 acres of the best land on the Mexican side of the Rio Grande in the El Paso valley.

Owing to the superior shipping facilities afforded by the numerous competing railways that centre at El Paso; to the ideal climatic conditions that obtain in this locality (where is found the most perfect climate on earth, taking it the year around), conditions peculiarly adapted to fruit and vine growing; and to the unsurpassed fertility of the valley soil, an alluvial deposit of ages; Mr. Weber's 40,000 acres even would be worth quite \$20,000,000.00, if so blessed with *free water* under such proposed "International" guarantee.

In California, where the annual water rent is \$5.00 an acre and upwards, and the water supply is relatively indifferent, and where the climatic and shipping conditions are far less favorable than they are in the Rio Grande valley, first class irrigable lands frequently sell for as much as \$1,000.00 an acre, the value of the land being governed by its productivity. So, looking to the vastly superior natural advantages that are found on the Rio Grande, advantages that must soon make the valley, both

above and below El Paso, the garden spot of the American continent, \$500.00 an acre is not an unreasonable price at which to estimate the potential value of the lands owned and controlled by the promoters of the "International" dam scheme.

With such an enormous fortune almost within their grasp (our Elephant Butte enterprise alone barring the way), General Anson Mills and his associates were determined to ruin our great undertaking one way or another—it mattered not how to such as they. The rights of the people of New Mexico, the rights of the farmers in the valley above El Paso, the future of El Paso as a health resort, national honor, official duty, nothing was to be allowed to stand in the way of their greed for gold.

Our great enterprise had to be destroyed, and, as they considered that the end justified the means, they went about it in a thoroughly characteristic manner. Every possible effort was made to induce the Federal authorities at Washington to intervene; the support of all sorts of influential officials and members of Congress was enlisted; inspired protests, petitions, and claims for damages, were sent to Washington from Mexico; the Mexican Minister was prompted and coached to play his part; delegations were sent to Washington to appear before the Congressional Committees and the Departments; and to such purpose were Mexico's alleged rights and claims pressed that the Secretary of State, the Honorable Richard Olney, was led to call upon Attorney General Harmon

for an official opinion as to the same.

But, here again a serious obstacle was encountered. Mr. Harmon looked into the matter with his usual painstaking care and legal acumen, and (without regard for General Anson Mills' protestations as "Commissioner," for the United States), in due course, he prepared and submitted to the Secretary of State an exhaustive and authoritative official statement that demonstrated conclusively that Mexico's absurd pretensions and claims found no warrant in fact, nor in law, nor in the existing treaties between the two republics.

In a syllabus of his paper, Attorney General Harmon said:—

"The taking of water for irrigation from the Rio Grande above the point where it ceases to be entirely within the United States and becomes the boundary between the United States and Mexico is not prohibited by treaty." * * * Claims against the United States by Mexico for indemnity for injuries to agriculture alone, caused by scarcity of water resulting from irrigation ditches wholly within the United States at places far above the head of navigation, find no support in the treaty."

"The rules, principles, and precedents of international law impose no duty or obligation upon the United States of denying to its inhabitants the use of the water of that part of the Rio Grande lying entirely within the United States, although such use re-

sults in reducing the volume of water in the river below the point where it ceases to be entirely within the United States.’’

“The fact that there is not enough water in the Rio Grande for the use of the inhabitants of both countries for irrigation purposes, does not give Mexico the right to subject the United States to the burden of arresting its development and denying to its inhabitants the use of a provision which nature has supplied entirely within its own territory.’’

“The recognition of such a right is entirely inconsistent with the sovereignty of the United States over its national domain.”

In the meantime, General Anson Mills continued to bombard the Department of State with the reports, letters, and official communications, urging that our company’s rights of way, reservoir rights and other special privileges be revoked.

In one of his letters to the Secretary of State, urging that our company’s rights be cancelled, General Mills said:

*“The probable flow of the water in the river here [the Rio Grande at El Paso, Texas], is likely to be ample for the proposed international reservoir [proposed by General Anson Mills] * * * but the flow will not be sufficient to supply the proposed international reservoir here and allow for the supply of the proposed reservoir * * * at Elephant Butte,*

or any other similar reservoirs in New Mexico."

"I would therefore suggest that these papers be referred to the Honorable, the Secretary of the Interior, with a request that no further grant for reservoirs be made in New Mexico (sic) and that if practicable the approval of the reservoir at Elephant Butte be cancelled or withdrawn."

The Secretary of State, Mr. Olney, misled by the "Commissioner's" exigent demands and assertions, and by the (inspired) petitions and appeals, transmitted to his Department by the Mexican Minister, wrote to the Secretary of the Interior with a view to ascertaining *whether there is any legal power to cancel the rights claimed by the said irrigation company [our company], and if the power to cancel existed, whether it could be exercised without injustice to the parties directly or indirectly interested in the enterprise."*

In reply to Secretary Olney's inquiry, as above quoted, the Secretary of the Interior, the Honorable D. R. Francis, said:

*The application of the Rio Grande Dam and Irrigation Company [the parent company, from which the English company acquired its rights and titles] was approved by my predecessor. * * * In my opinion I have no right under the law to revoke this approval. It has been decided by the Supreme Court of the United States * * * that the approval by the Secretary of the Interior * * * cannot be*

revoked by his successor, and upon the principle therein declared, I deem it beyond my authority to revoke my predecessor's approval of the maps filed by the Rio Grande Dam and Irrigation Company.

Assuming that I had such power, I submit to you whether or not the exercise of it would be proper in view of the opinion of the Attorney General of your Department. [Attorney General Harmon's opinion above quoted.]”

To use an expressive Western colloquialism, General Anson Mills was again “up against it.” when Secretary Francis refused to act upon the suggestion that our rights be “cancelled or withdrawn;” but with an energy worthy of an honest cause our patriotic “Commissioner,” for the United States, unceasingly continued his efforts to destroy our company's enterprise, and thus to clear the way for the successful consummation of his “International” dam scheme.

Shortly after Secretary Francis wrote to Secretary Olney, as above, President Cleveland's term of office expired, and President McKinley's cabinet appointments evidently encouraged General Anson Mills to hope that, with a new Secretary of State, Secretary of the Interior, Secretary of War, and Attorney General to deal with, the “International” dam scheme might be carried out, ex-Attorney General Harmon's opinion notwithstanding.

For some time prior to President McKinley's inauguration, General Anson Mills most assiduously labored

to convince the Secretary of State and Secretary of War that the Rio Grande is a navigable stream in New Mexico, that our dams would obstruct a navigable water course, and therefore that our works should be enjoined. But in reply to General Anson Mills' pertinacious importunities in this respect, Secretary Olney pointed out that:—

“A navigable river is a river which affords a channel for useful commerce.”

“A stream which can be used for commercial purposes on extraordinary occasions only is not navigable in this sense.”

“The river must be an interstate or international highway for commerce.”

“Mere capacity to float a log or a boat will not alone make a river navigable.”

But, although General Anson Mills knew full well that the Rio Grande, owing to its torrential character, rocky cañons, precipitous rapids, and shifting sand-bars, is not a navigable stream in any part of its course, except perhaps, for a few miles between Rio Grande City and Brownsville, Texas, near the Gulf of Mexico, he nonetheless persisted in falsely asserting that the river is *navigable by steamboats for hundreds of miles both above and below El Paso, and that it has been used for commercial intercourse between the two Republics*. He carefully avoided any reference to the reports of the Government engineers that had been detailed to investigate the characteristics of the stream, and who had specifically declared

that "*the Rio Grande is not now navigable, and cannot be made so by open channel improvements;*" and as the new Chief Secretaries of the Departments, appointed by President McKinley, were, presumably, ignorant of the real character of the stream, and of the genesis of the "International" dam scheme, it was, probably, not difficult for the "Commissioner," for the United States, of the International (Water) Boundary Commission, to convince them that the Rio Grande *is* a navigable waterway, extensively used for commercial intercourse between the two Republics; that Mexico's fictive claims were just and proper; that Congress had sanctioned his, General Anson Mills', plans for the construction of a great "International" reservoir at El Paso (which, it may be inferred, Mills contended would not interrupt navigation at the "Port of El Paso"); and that grave international complications would arise if our Elephant Butte dam were completed.

Needless to say, nothing was said to the new Secretaries of State and War about Attorney General Harmon's untoward ruling, and only such inspired documents and reports as were favorable to Mexico's alleged rights were mentioned or exhibited in support of General Anson Mills' demands.

Pitiful stories were told of the great and cruel wrong this country had done, and was permitting a soulless foreign corporation to do, to the poor Mexican farmer on the Mexican side of the Rio Grande. It was even asserted

that our company was about to enforce a most iniquitous monopoly, that we were going to “*hold up the prosperous cities of Las Cruces and El Paso and to freeze out the farmers of the Rio Grande valley below Elephant Butte.*” That the city of El Paso had subscribed \$10,000.00 towards the cost of our preliminary survey; that the landowners of the valley below and above El Paso had signed contracts donating to the company, in exchange for water rights, part of their lands, so as to create a valuable property basis for our bond issue; that our enterprise had the support of the entire local population; such facts were, of course, not mentioned by General Anson Mills nor by his friends and official backers. In short, the truth was not told, and no lies were left untold that could serve the ulterior purpose of the promoters of the “**International**” dam scheme; and again the Mexican Minister was prompted to move in the matter, and again all possible pressure was brought to bear on the Departments in order to trick the new Administration into taking action to enjoin the completion of our works.

Under our Federal Constitution, the Secretary of War has jurisdiction over all navigable waters of the United States. No bridge or other obstruction to a navigable water-way within the United States may be built without his express sanction. Therefore, as a last resort, General Anson Mills had sought to invoke the intervention of the War Department. He contended that the Rio Grande is a navigable stream in New Mexico, and that consequent-

ly President Cleveland's former Secretary of the Interior, Mr. Hoke Smith, had exceeded his powers when he officially authorized our irrigation works, approved our maps and plans, and granted to your company the Elephant Butte reservoir site, and other valuable rights of way and privileges.

It may be taken for granted that the new Secretary of War knew little, if anything, about the matter, and that he relied entirely upon General Anson Mills' most explicit and emphatic statements as to the navigability of the Rio Grande, and as to our alleged illegal and immoral purpose. However this may be, at any rate the new Secretary of War addressed an official communication to the Department of Justice, asking "for an opinion on the question," (i. e., the power of the general Government to intervene if the Rio Grande is navigable), and inviting attention "to the pressing need of early action."

Mr. Holmes Conrad, then the Solicitor General, instructed by Mr. Joseph McKenna, President McKinley's first Attorney General, promptly replied as follows:-

"The answer to your inquiry is obvious, if the stream be a navigable one.

"This you assert and I assume it.

*"The remedy of the United States is by injunction * * * and if the dam has been constructed, also, by criminal prosecution."*

"On being advised that the obstruction has been or is about to be erected, I shall at once order proper

proceedings to be instituted."

This letter was marked "approved," and it was countersigned by Attorney General McKenna—now a Justice of the Federal Supreme Court.

On receipt of the letter last above quoted, the Secretary of War, Mr. Alger, wrote to the Secretary of State and to the Secretary of the Interior, and sent to them copies of Mr. Conrad's letter. On May 1, 1897, General John M. Wilson, Chief of Engineers, telegraphed to General (then Colonel) Anson Mills, as follows:—

"Attorney General will order proper proceedings instituted if construction of Elephant Butte dam has been or is about to be commenced. I am instructed by Secretary of War to obtain facts as to status of construction. Will you please telegraph me such facts."

General Anson Mills sent a long telegram from El Paso to General Wilson, in which much misleading information was volunteered. Mills also stated that he would write "other information more in detail which may be useful to the officer instituting the proceedings."

On May 4, 1897, Secretary Alger wrote to the Attorney General (transmitting a copy of General Anson Mills' telegram) and requested that proceedings be instituted to enjoin the completion of our company's works.

On May 14, 1897, General Wilson wrote to Anson Mills as follows:—

"Colonel: As it is believed to be a matter of

considerable interest to you, I beg to advise you that the Attorney General has informed the Department that he has instructed the United States Attorney of New Mexico to institute such proceedings as may be proper to prevent the construction of a dam across the Rio Grande at Elephant Butte, New Mexico, by the Rio Grande Dam and Irrigation Company.

Thus the famous Elephant Butte suit was instigated by a Federal officer in the interest of "graft." General Anson Mills had free access to the files of the Departments, and I and my attorneys were invariably denied such privilege, consequently I cannot quote very extensively from the incriminating official correspondence in regard to the inception of the Elephant Butte suit, but the above citations suffice to show that the suit was instituted solely at Mills' instance, and that it was not instituted nor maintained for the protection of commerce.

I may mention, also, that it is well known in El Paso that the promoters of the "International" dam scheme instigated the filing of the Mexican claims against the United States; that they sent their own agents among the Mexican farmers to work up the claims in question; and that General Anson Mills urged the Mexican Government to press such claims at Washington. The El Paso Daily Herald of November 16, 1900, published the following significant paragraph:—

"When General Anson Mills went to the City of Mexico last month, he went there to ask the Secre-

tary of State and President Diaz to continue their objections to the building of the Elephant Butte dam, and other dams on the Rio Grande above El Paso.”

Such are the salient features of the official plot that seduced the General Government into instituting the Elephant Butte suit. I have not attempted to cite more than a few of the official documents, to which I have access, that go to prove that General Anson Mills has grossly abused his official position, and that in promoting his infamous scheme to loot the Federal treasury, and to rob the people of New Mexico and the English investors in the Elephant Butte enterprise, he did not hesitate to commit the crime of wilful perjury. In dictating this sketch of the primary facts of the case I desire to prove, if possible that, notwithstanding the apparently dishonest purpose of our General Government, there is little *a priori* improbability in the supposition that the suit to enjoin our works, while obviously instigated by Mills in bad faith, and maintained in bad faith by his official backers, may, nonetheless, have been instituted in a proper spirit, and in what was believed to be in the interest of justice.

General Anson Mills is a very rich man, and, it would seem, he is exceptionally influential also. He has made a large fortune out of certain Government contracts, and, doubtless, in his business affairs, he “stands in” with more than one influential personage in official circles. He has one of the handsomest homes in the most fashionable quarter in the

city of Washington, and his family entertain, frequently and most lavishly, anybody and every body of influence and position in the official and political life of our Capital City, from cabinet ministers, justices of the Supreme Court, and Senators, down. His family and beautiful home have been described as "charming;" but Mills himself is considered to be little better than an uneducated, ill-mannered boor. The form of his written communications to the Departments and of his oral testimony before the Congressional Committees show him to be illiterate, while his appearance and lack of the manners that bespeak the gentleman prove him to be ill-bred. His army career was wholly devoid of merit, and his promotion to the rank of Brigadier-General, and his appointment as "Commissioner," for the United States, of the International (Water) Boundary Commission, were inexplicable public scandals.

Whatever the source of his political "pull" the influence that has kept him in office, throughout two Federal administrations, has been powerful enough to save him from being court martialed for conduct unbecoming an officer and a gentleman, and from prosecution for perjury. It may be, however, that Mills is merely a consciousnessless tool of other and more capable minds.

When the Honorable B. S. Rodey, New Mexico's late Delegate to Congress, and now a Federal Judge in Puerto Rico, wrote to Secretary Hay protesting against the attempt to deprive the people of New Mexico of their natural and inherent right to impound and use for irrigation pur-

poses the flood waters of their Rio Grande catchment area, and against the granting of a prior right to such waters to Mexico, Mr. Hay replied, saying:—

“I have the honor to inform you that a copy of your letter has been referred to Brigadier-General Anson Mills, U. S. A., retired, Commissioner of the United States on the United States and Mexican (Water) Boundary Commission.”

But the danger that threatened New Mexico's chief source of maintenance was so grave and imminent, that, notwithstanding the above quoted deliberate and gratuitous snub administered in such a pointed and wanton manner, Mr. Rodey called upon Secretary Hay and endeavored, but, strange as it may seem, in vain, to explain the true nature of General Anson Mills' purpose.

A few months later, a large number of petitions (signed by leading citizens and public men in New Mexico), setting forth the real facts of the case against General Anson Mills, and praying that the President order an official inquiry in the premises, were presented at the White House. The last of a number of similar petitions were presented about three years ago, but, as no such inquiry has been ordered, it may be inferred that President Roosevelt, personally, never heard of them. Attorney General Knox addressed a formal note to the President, saying that the matter did not fall within the jurisdiction of the Department of Justice, but that instead it came under that of the Department of State—Mr. Hay's De-

partment; and some one at the White House sent the petitions on to the War Department, where the head of that Department, Secretary Taft, likewise denied jurisdiction, and passed them on to the Department of State. Secretary Hay promptly sent them back to the White House, and, at the same time, took it upon himself to write an offensive and wholly uncalled for letter to me, strongly denying that the matter came within the purview of his jurisdiction.

The charges preferred in such petitions were substantitly proved by correct citations from authentic official documents, and certainly warranted Court Martial proceedings, but Secretary Taft ignored them and denied jurisdiction.

General Anson Mills, as "Commissioner" for the United States, of the International (Water) Boundary Commission, is the head of an important branch of the Department of State; but, notwithstanding the irrefragable proof of General Anson Mills' guilt, Secretary Hay, like Secretary Taft, denied having jurisdiction. Why, one can not but ask, this remarkable unanimity, this patent disposition to shield a common perjurer?

Since the said petitions were returned to the White House nothing further has been heard of them. Presumably they were suppressed at the instance of General Anson Mills' powerful friends, and were not brought to President Roosevelt's personal notice.

Mr. John Morley's alleged *bon mot* that President

Roosevelt is a cross between St. George and St. Vitus is far more witty than true. The President may, or may not, have all the virtues credited to him by his friends, or all the faults attributed to him by his enemies, but that he is "strenuous," indeed, in his advocacy of honesty in public life, and of the "square deal," no one can deny: it is impossible to believe him capable of condoning the crime of perjury in any public official, high or low. No one, with any knowledge of President Roosevelt's guiding principles and avowed purpose towards dishonest officials, can believe that he has not been kept in total ignorance of General Anson Mills' criminal misconduct. It would be absolutely blasphemous to contend otherwise.

I am moved thus to explain at some length the manner in which our General Government was tricked, by General Anson Mills, into instituting the Elephant Butte suit, knowing, as I do, that, from your point of view and that of other bond holders, appearances indicate that all our Federal officials are "tarred with the same brush," and that they one and all have wittingly been party to the outrage in question; still, I would have you believe, if possible, that President Roosevelt is entirely innocent of the gross breach of good faith the history of the Elephant Butte suit so completely reveals.

Secretary Hay and Attorneys General Griggs and Knox, we know, were fully cognizant of the ulterior purpose back of the proceedings in the courts, and, as they appear to have had good reason for seeking to save Anson

Mills from prosecution for perjury, it may be taken for granted that they misrepresented the facts of the case, when, if ever, questioned by the President.

It is a notable fact that, in 1900, when I first went to Washington, with a view securing justice for the English bond holders and others who had joined with me in financing the Elephant Butte enterprise, I found, at first, more than one of the Departmental officials willing to assist me to that end.

Solicitor General Richards, for instance, who seemed to know all about the genesis of the Elephant Butte case assured me that he would do all in his power to help me protect the rights of the English investors. Secretary Wilson, of the Department of Agriculture, listened with apparent interest, and seemingly with profound astonishment, to my statement of the case against General Anson Mills, and of the manner in which the General Government had been led by false reports and general misrepresentations to institute the proceedings to enjoin us from completing our irrigation works. Mr. Wilson even called in, and introduced to me, Dr. Whitney, of his Department, at whose request I submitted a type written statement of the case. Professor Robert T. Hill, of the Geological Department, who for over fifteen years had been in charge of the Hydrographic investigations of the Rio Grande basin, and whose official reports alone establish, beyond question, that the Rio Grande is not a navigable stream, and that less than one per cent of its flood waters ever

reach the Gulf section, over 1,200 miles below Elephant Butte, assured me that the files of the Geological Department afforded more than sufficient evidence to disprove the allegations in the Government's bill of complaint.

Professor Hill, at first, took a keen interest in the case. He introduced me to his chief, Mr. Charles D. Walcott, Director of the Geological Survey, who, at first, also extended to me every courtesy, and placed the files of his Department at my disposal. Secretary Hay, himself, upon the occasion of my first interview with him at the State Department, received me with marked courtesy, and, while expressing doubt as to the correctness of my source of information, relative to General Anson Mills' ulterior motive, requested me to submit a written statement thereon. Subsequently, when I submitted such statement, in which I quoted official documents in support of my charges against General Anson Mills, I was assured that the Department of Justice would be called upon for a report on the matter, that the result of such report would be communicated to me, and that the Department of State would not permit any injustice to be done in respect to our vested rights.

But I soon found that a subtle and powerful influence was working against me. Secretary Wilson, Solicitor General Richards, Dr. Whitney, Mr. Walcott, Professor Hill, one and all, took refuge in silence when I urged them to use their influence in our behalf, and in defense of what was so obviously right and reputable. Professor Hill,

when I asked him to appear before the House Committee on Foreign Affairs, and to testify as to the characteristics of the Rio Grande, assured me that he would help me if he could, and that if he were subpoenaed as a witness he would tell the truth, the whole truth, and nothing but the truth, regardless of official disfavor, but that as a Government official he could not otherwise testify for us.

My repeated applications for a copy of the report Secretary Hay had promised should be called for were ignored. The various petitions, signed by the people of New Mexico, and forwarded to the Departments by Territorial Chambers of Commerce, educational institutions, and other public bodies, praying that the decisions of the courts in our company's favor be accepted as final, were likewise ignored. The fact that, in 1900, the Territorial political platforms contained planks deprecating the Government's attempt to destroy our great enterprise, and urging that the findings of the court in our favor be accepted as final, was ignored.

General Anson Mills' evil influence was paramount to the demands of justice and to the wishes of the people of New Mexico. So much so that it was with the utmost difficulty that I was able to prevent the passage of bills, by Congress, that would have authorized the construction of the proposed international dam; that would have prohibited the storage of any of the waters of the Rio Grande for irrigation above El Paso; and that would have enabled the promoters of the "International" dam scheme to at-

tain by Legislative enactment the dishonest end they could not hope to achieve through the medium of the Federal Courts.

You will remember that in 1900, when it became clear to Anson Mills and his friends that I could not be bluffed or bribed into a dishonorable compromise, and that the suit against us must inevitably fail in the courts sooner or later, the first of the bills known as the "international dam bills," was introduced in Congress, ostensibly "*to provide for the equitable distribution of the waters of the Rio Grande, between the United States of America and the United States of Mexico;*" that so soon as I heard of the introduction of such bill and of this further danger, I abandoned my private interests in England, and at my own expense went to Washington to oppose the passage of the iniquitous measure in question. So powerful was the administrative influence in support of the bill, that, despite its unprecedented character, it was favorably reported by the Committee on Foreign Relations, and would have been passed by a party vote if Senator Carter had not introduced a memorial, that I drew up, setting forth the main facts of the case, and had the bill referred back to Committee. I sent copies of such memorial and an explanatory personal letter to each member of the House and Senate, and I repeatedly appeared before the committees and submitted arguments in opposition to those put forward by General Anson Mills and his official friends.

All of the so-called "International dam bills," while

affecting merely to provide for the equitable distribution of the waters of the Rio Grande between the two Republics, were in reality so worded as to deprive the people of New Mexico of their right to impound and utilize the flood waters of the Rio Grande and its tributaries above El Paso, and as to reserve the whole of such flood waters for irrigation in the El Paso valley, just below New Mexico's southern boundary.

During the three years and a half that I remained at Washington, protesting against the passage of any such measure as that proposed in the interest of General Anson Mills' "International" dam scheme, six of such bills were introduced and defeated in committee. The first of these prohibited the storage of the flood waters of the Rio Grande in Colorado, as well as in New Mexico, but its promoters, finding they could not without danger to their scheme so invade the sovereign rights of the State of Colorado, omitted from their later bills all reference to that state, and sought to restrict the proposed inhibition to the Territory of New Mexico; thus asking Congress, under its plenary powers over territories to draw an invidious distinction between the rights of the people of a state and of those of a territory.

General Anson Mills and his official friends alleged that the proposed "International" reservoir was primarily intended to supply the farmers on the Mexican side of the Rio Grande (in the El Paso valley) with as much water as the said Mexican farmers already had a "prior right"

to appropriate; but the specific wording of each of the said bills was such that no amount of sophistical quibbling could entirely obscure their real object. Fortunately, after I succeeded in getting the first bill referred back to committee, I was able to arouse sufficient interest among the members of the Committees to prevent a favorable report on any of the other bills, the strong official pressure brought to bear in support of General Anson Mills' scheme notwithstanding. He had made so many absurdly inconsistent and conflicting statements in his numerous letters, reports, and official communications to the Departments, and in his testimony before the Committees, that it was not difficult to stultify his position or to expose his dishonest purpose; and thus in a measure convince many members of Congress of the unwisdom and injustice of the proposed legislation.

I succeeded in defeating not only six of such bills, but also a number of artfully worded amendments that General Anson Mills and his friends managed to get tacked on to otherwise innocent noncontentious measures; amendments that if allowed to pass would have limited farming in New Mexico to the insignificant area then under cultivation.

For instance, a proviso was added to a bill, "To permit the right of way through public lands for tramroads and canals and for other purposes." It read as follows:—

"PROVIDED, that nothing in this act or the act approved March 3rd, 1891, entitled, 'An act to

repeal timber culture laws, and for other purposes,' or the Act approved February 26, 1897, entitled, 'An Act to provide for the use and occupation of reservoir rights reserved,' shall be so construed as to authorize the appropriation or storage of the waters of any stream or river, State, interstate, *or international*, to which others below have right by prior appropriation, or the obstruction or interference with the navigable capacity of such streams or rivers, and such appropriation or storage, obstruction or interference, is hereby prohibited."

To the superficial observer, or to the unenlightened mind, this proviso doubtless appeared innocent enough, but, in the light of our knowledge of the esoteric history of the International dam schemers' plot, it was manifestly a subtle attempt to have Congress appear to justify the attack upon our enterprise. Later, Anson Mills and his friends tried to have the following amendment substituted for the above proviso, which had been struck out in committee:—

"That the Secretary of War is hereby authorized to secure in the State of Texas the necessary lands on which to build a dam on the Rio Grande at or near El Paso in that State. *No reservoir for the storage of water shall be built on the said river within the boundaries of the Territory of New Mexico without an Act of Congress authorizing the same.*"

From the above you will see that our rights and those

of the people of New Mexico were in constant danger. If any one of the International dam bills, or any one of such amendments to other bills, had been passed by Congress, Anson Mills and his associate promoters of the "International" dam scheme would have triumphed. Happily for the future farming interests of New Mexico, I and my friends and paid agents were constantly on the alert, and by acting promptly and with vigor we were alert, and, by acting promptly and with vigor, we were able to head off such proposed legislation.

When the Attorney General, Mr. McKenna, ordered the proceedings against us, the case was first in charge of Solicitor General Richards, Mr. Conrad's successor in the Department of Justice; but later, when an appeal was taken by the plaintiff—the Government, against the findings of the territorial courts in our favor, Attorney General John W. Griggs, Mr. McKenna's successor, took the case out of Mr. Richards' hands. I fancy that Mr. Richards, like the United States Attorney for New Mexico, Mr. Childers, was too honest to be left in charge of a case that was so patently ill advised and based on glaringly false allegations.

The Government's original bill of complaint, alleged *inter alia* that "The Rio Grande is navigable in New Mexico," and that the company's storage dam would "obstruct navigation, and thereby be a violation of the provisions of the Act of Congress, September 19, 1890, and of the Act approved July 19, 1892."

The case was heard on motion to dissolve the temporary injunction granted by the court, and after a full hearing, lasting several consecutive days, the court dissolved the injunction, and dismissed the Government's bill. Counsel for the Government appealed to the Supreme Court of the Territory; the decree of the trial court in our favor was sustained; and the Attorney General then ordered an appeal to the Supreme Court of the United States.

When the appeal was heard at Washington, Attorney General Griggs himself presented brief and argued the case for the Government. In his brief and argument he contended that the Rio Grande is a navigable stream, both above and below El Paso, Texas, and that the completion of our storage dam would constructively be a violation by the United States of its treaty with Mexico; thus wilfully ignoring Attorney General Harmon's authoritative ruling relative to Mexico's alleged treaty rights, and the reports of the Government's engineers in respect to the non-navigability of the Rio Grande.

The case was heard at Washington on October 10, 1898. Seven months later Justice Brewer announced the decision of the court, and declared that:—

“The Rio Grande within the limits of New Mexico is not a navigable stream.”

“Neither is it necessary to consider the treaty stipulations between this country and Mexico.”

*“As it has early developed * * * that the*

mining interests in certain states and the reclamation of arid lands in others * * * justified the appropriation of flowing waters for mining purposes and the reclamation of arid lands, there has come to be recognized in those states * * * a rule which permits the appropriation of the waters of a flowing stream for other than domestic purposes." * * *

"We may, therefore, properly limit our inquiry to the effect of the proposed dam and the appropriation of waters upon the navigability of the Rio Grande within the limits of present navigability." [Over 1,200 miles below Elephant Butte.]

Having thus disposed of the Government's allegations as to navigation in New Mexico, and as to Mexico's so called treaty rights, the court reversed the decree of the trial court dismissing the injunction, and for the purpose of such inquiry, and for such purpose only, remanded the cause, and ordered:—

"An inquiry into the question, whether the intended acts of the defendant in the construction of the dam, and in appropriating the waters of the Rio Grande will *substantially* diminish the navigability of that stream within the present limits of navigability, and if so, to enter a decree restraining those acts *to the extent that they will so diminish.*"

Pursuant to the above mandate, the cause was again (seven months later) referred to the trial court in New Mexico. The inquiry began on December 12, 1899, and lasted

nine full days; thirty-three witnesses were examined; and a large number of affidavits, official reports, and public documents, and other forms of evidence, were submitted.

On January 2, 1900, the judge of the trial court filed his findings of facts, thirty in all, and again ordered that the Government's bill of complaint and the injunction be dismissed: not a particle of the evidence was of a nature to sustain the Government's bill—except, of course, General Anson Mills' affidavit that the Rio Grande is navigable for hundreds of miles above and below El Paso, Texas.

The Attorney General again appealed to the Supreme Court of New Mexico; and on August 4, 1900, the Associate Justices of that Tribunal again unanimously confirmed the findings of the trial court on all points.

After considerable delay, Attorney General Griggs again ordered an appeal to the Federal Supreme Court; but, odd as it may seem, we were not advised that such an appeal had been taken *until after* the general election in the November following. The people of New Mexico were strongly opposed to the suit, and had petitioned the Government to accept as final the decrees of the territorial courts. Undoubtedly, the delay in announcing the further appeal was for political reasons.

Subsequently, when the cause a second time came up before the Federal Supreme Court at Washington, counsel for the Government (a certain Marsden C. Burch, special counsel for the Department of Justice) knowing that the

findings of the trial court were fully warranted by facts, and by the evidence that had been submitted and that made up the greater part of the 800 pages of the record, confined his argument almost solely to falsities put forward in support of his contention that the cause should again be remanded to the lower courts, on the alleged ground that the trial court and the Supreme Court of the Territory had been influenced by local interests. As a creature of the promoters of the "International" dam scheme, he sought to keep the case tied up in the courts until his "friends" could get their "International" dam bill through Congress, and thus by means of Federal legislation accomplish the end they could not hope honestly to attain in the courts. He deliberately misrepresented the purpose of the defendant, wilfully suppressed important facts germane to a just and proper consideration of the case, and, in his indecent efforts to get the cause remanded again, he did not scruple to charge that the judge of the trial court and the Justices of the Supreme Court of the Territory had been guilty of grossly improper and dishonest conduct. In his brief he alleged:—

That "*the court was unwilling * * * to make findings authenticated by the highest authorities*" (p. 85);

That the court "*siczed upon a single circumstance * * * to build up an argument*" favorable to the defendant company (pp. 80,90);

That the court "*was straining to lose the water*

which flowed below El Paso”—thus favoring the defendant company (p. 87);

That “*the court went out of its way to find that the flow*” during the flood season “*did not affect the height of the river at Laredo, Texas*” (p. 87);

That “*the purpose*” of the trial court “*is plain*” (p. 77);

That the courts were “*shifty*” (p. 87);

That “*in order to get rid of that water which came down stream from El Paso, the court was willing to make a finding * * * of * * * trash*” (p. 85);

That “*the court was eager to find the Rio Grande dry at the mouth of the Conchos*”—thus favoring the defendant company (p. 76);

That the findings of the trial court were built up “*in the form of a garbled showing,*” and were “*grossly misleading*” (p. 51);

If Burch’s charges, as above fairly quoted, meant anything at all, they meant that the trial judge had been deliberately partisan, and that he had wilfully abused his position, and that the Associate Justices of the Territorial Supreme Court had been equally dishonest. Burch’s brief for the Government teemed with impertinent, sneering reflections upon the intelligence and integrity of the judges of the Territorial Courts. As the Solicitor General of New Mexico said:—

“I doubt if any similar document was ever filed

in the Supreme Court, or indeed in any other Court. It is a tirade against the trial and our Supreme Court, which merited the censure of the Supreme Court of the United States."

The Honorable B. S. Rodey, then New Mexico's Delegate to Congress, when he saw Burch's brief, wrote at once to Judge Parker, the trial judge, calling attention to the insulting nature of the shameless reflections upon the character of our territorial judiciary, and strongly urged that Burch's charges formally and officially be resented, and that, if possible, Burch should be held for contempt of court.

Strange to say, about the time that Burch was permitted, unreprieved, to present his disgraceful brief in the Elephant Butte case, the Federal Supreme Court, in the case of Wilkes County, N. C., vs. Coler, refused to countenance criticism of the lower court. The Chief Justice said:—

"The papers on which this application is made contain matter intended to reflect on the impartiality of one of the judges who participated in the decision below, which should not have been submitted to this court. Our records must be kept free from scandal, and not be made the vehicle of unwarranted attacks."

Considering the facts set forth in the 800 pages of the "Record" sent up from the territorial court in the Elephant Butte case, and the unrestrained and exceedingly grave character of Burch's charges as above, we can only

infer, in view of the very proper determination of the Chief Justice to protect from "unwarranted attacks" the judges of lower courts, that the Associate Justices of the Supreme Court of the United States took for granted that Burch's charges were warranted. Otherwise, surely, Burch would have been severely censured, if not disbarred for his "reflections upon the impartiality of the judges who participated in the decision below."

If Burch's indecent charges had been true and susceptible of proof, the trial judge and Associate Justices of the Territorial Supreme Court should have been removed from the bench; if untrue Burch should have been disbarred, and the cause should not have been remanded.

It is very strange indeed, not to say significant, that the Justices of the Federal Supreme Court, the Attorney General, and the accused themselves, all allowed Burch's vile accusation to pass unquestioned and unrebuked. That such accusations were assumed to be "warranted" is inferable from the fact that the cause was again remanded, and from the further fact that Secretary Root in explaining, for the information of the British Government, why the cause was sent back to the trial court a second time, said:—

"The findings of fact of the trial court were prepared at the request of the court by counsel for the defendant."

When the premier member of the President's cabinet in an official document addressed to the British Foreign

Office, and dealing with what he calls a "great case," thus reflects upon the honesty and good faith of a judge of our Federal Court, and thereby holds up our judiciary to scorn, it is not at all surprising that the current suspicion in England and on the Continent as to the integrity of American Courts is held to be fully justified.

Personally, I consider the inclusion in Mr. Root's "Memorandum," of such reflection upon the "impartiality of the courts below," merely goes to prove that Mr. Root himself has no knowledge of the facts of the case, and that his "Memorandum" was prepared by no other than Marsden C. Burch.

The obviously proper course in the premises was not adopted. The trial judge and the Associate Justices of Territorial Supreme Court, appointees of the Federal authorities at Washington—and not elected by the people of New Mexico, were not removed from office; and Marsden C. Burch, as special attorney for the Department of Justice, was permitted to remain in charge of the Elephant Butte case.

Its indecent character notwithstanding, Burch's extraordinary brief served the end intended; *id est*, the cause was again remanded for further inquiry as to the question of fact at issue, viz., whether the intended acts of the defendant * * * * * would substantially diminish the navigable capacity of the Rio Grande.

As further proof of Burch's dishonorable support of General Anson Mills' "International" dam scheme, I sub-

mit the following quotation from a letter written by Mr. J. A. Smith, of El Paso, (sometime a member of the "International" dam schemers' "lobby" at Washington) to Judge J. R. Harper, also of El Paso, in regard to one of the "International" dam bills, then in the hands of a sub-committee of the House Committee on Foreign Affairs. Mr. Smith said:—

..“I believe that the Secretary of State will refer them [the members of the committee] to Mills, or call him into consultation, and I went at once to see Burch and paved the way for the Attorney General to refer them to him.. If this should be the course taken in the matter, we are practically sure of a favorable report from the committee.”

When the cause was remanded, Government engineers were sent out to measure the Rio Grande floods flowing from above El Paso; but they found, as their published report now shows, that less than one per cent. of such flood waters ever reaches the head of navigation, so called, in the Gulf section of the stream, over 1,200 miles below Elephant Butte.

In the meantime all attempts on my part to get the case up for trial were defeated by the discreditable tactics of counsel for the plaintiff; and when the Solicitor General of New Mexico filed a motion to intervene, praying that the Territory be permitted to join as a co-defendant in the case, on the ground that the people of New Mexico had *an interest in the success of the defendants, and desired*

to unite with them in resisting the claims of the plaintiff," again the demands of counsel for the Government were paramount to those of justice, and the motion was overruled.

Months later the Government filed a motion to supplement its bill of complaint, and asked the judge of the trial court to declare our charter rights and rights of way forfeited because we had not completed the construction of our irrigation works within the five years prescribed by law; and, incredible as it may appear to you, the Government's motion so to reconstruct its case was granted by the court *the day such motion was filed*, and without proper notice to the defendants.

Some months later I heard by chance of Judge Parker's decree declaring our rights forfeited because we had not done the very thing we had been enjoined not to do, pending the final decision of the courts in our favor. I at once employed counsel and filed a motion to have such decree set aside, and, in due course, a day for hearing such motion was fixed, and arguments, *pro et con*, were heard; but, despite the manifest impropriety and injustice of the Government's supplemental bill, and, all things considered, of the court's decree of forfeiture, Judge Parker overruled my motion. I then appealed to the Territorial Supreme Court. *Nearly three years later*, that tribunal gave notice that Judge Parker's ruling had been sustained, but the actual decision of the court has not yet been handed down.

I have ordered an appeal to the Supreme Court of the

United States, and unless that tribunal elects to stultify itself completely by reversing the principle underlying all of its previous rulings in regard to such supplemental bills, and thereby violates the established precedent of a hundred years, the Government's supplemental bill will be dismissed.

Our Federal Supreme Court, like our National Department of Justice, was created for the protection of the rights of all, and not to enable the General Government for the time being, or any set of official grafters, to outrage the law of the land; and unless the Honorable Justices of the Supreme Court of the United States are false to their trust, and proclaim to the whole world that foreign investors cannot with safety rely upon our courts for proper protection, and that, so far as our national Government is concerned, our boasted love of fair play and the "square deal" is sheer unadulterated humbug, there can be no doubt of our ultimate success in the courts, despite the fact that, regardless of the pending litigation, the General Government has undertaken, by formal treaty with Mexico, to build the Elephant Butte dam as a national project, and thus to destroy our vested rights and to confiscate our property. Unhappily, as the plaintiff in the Elephant Butte case is both judge and litigant, it is to be expected, judging the future by our past experience, that the cause will *again* be remanded for further inquiry as to the question of fact; namely, the effect, if any, the construction of the Elephant Butte dam will have on the alleged navigabil-

ity of the Rio Grande.

Secretary Root, in his "Memorandum," in response to the British bondholders' petition, naively asserts that the case has not, as yet, been tried on its merits; but, such admission notwithstanding, the General Government, through its Reclamation Service, is now proceeding to build the Elephant Butte dam, and our complementary irrigation works, without waiting for a decision of the courts in the Government's favor. Could anything be more brazen, or more likely to bring our legal tribunals and national institutions into contempt?

As I had defeated the several "International" dam bills, and had thoroughly exposed the mendacity of General Anson Mills' scheme and the ulterior purpose back of it, he and his friends were forced to abandon their attempts to carry through such proposed legislation. The General Government, however, "as the best way out," (to quote Secretary Root's "Memorandum") of the embarrassing position in which General Anson Mills had involved the Department of State, has decided to build the Elephant Butte dam as a national project. Mexico, under a treaty with the United States, is to be supplied from the Elephant Butte reservoir with *free water* to the extent of 60,000 acre feet per annum; so that after all the promoters of the "International" dam scheme have done very well for themselves. While it is to be regretted that such unscrupulous grafters are to be permitted to profit to any extent whatever at the expense of the American

people, still it is highly gratifying, indeed, to know that they failed in their attempt to secure for their lands a *prior right* to the entire flow of the Rio Grande from above El Paso. To that extent, in any event, my years of labor and many sacrifices in defense of our rights, and of the rights of the people of New Mexico, have not been in vain.

The Government's reluctance to allow the Elephant Butte case to be tried on its merits a third time, as ordered by the last mandate of the Federal Supreme Court, and the contemptible, tricky way in which the said supplemental bill was filed, so thoroughly justified the general conviction abroad that the English investors in the Elephant Butte enterprise were to be "jockeyed out of their rights one way or another," that, with a view to protecting such rights, the British Government was asked to intervene. As you know the petition of the British bondholders, as transmitted by the British Foreign Secretary to the British Ambassador at Washington, urging that the rights of the investors in the Debenture-bonds issued in England be referred to the Hague Tribunal for adjudication, embodied in its terms the main facts set out in the several petitions that had been signed by the people of New Mexico and presented at the White House.

As you may not have kept a copy of such petition, I shall quote it at length, so that you may readily compare it with Secretary Root's reply thereto. The petition, as signed by the bondholders, was addressed to Sir Edward

Grey's predecessor. It was as follows:—

“PETITION”

“To the Most Honorable, the Marquis of Lansdowne, K. G.,
His Majesty's Secretary for Foreign affairs, Downing
Street, London, S. W.

My Lord Marquis:

“We, the undersigned, holders of the debenture-bonds issued by the Rio Grande Irrigation and Land Company, Limited, a company duly incorporated in 1895, under the laws of Great Britain and Ireland, now in liquidation, herewith beg to present the following statement of facts for your consideration, and pray that the same shall be transmitted through the customary official channels to the Government of the United States with a request that the undersigned's rights and titles be submitted to the Hague Tribunal for adjudication.”

“(1) In 1893, a company called the Rio Grande Dam and Irrigation Company was regularly incorporated under the laws of the Territory of New Mexico, United States of America, with a capital stock of Five Million Dollars (\$5,000,000) Dollars, in shares of One Hundred Dollars (\$100) each, for the purpose of constructing storage dams, irrigation canals, and other irrigation works in and along the Rio Grande (river) in Sierra and Doña Ana Counties, New Mexico, and in the State of Texas and the Republic of Mexico, as provided by the company's Charter of Incorporation, and by the Territorial and Federal Acts under which the said Company's franchise rights and special privileges were acquired.”

“(2) The franchise rights, undertaking, rights of way, and other special privileges and concessions of the said Rio Grande Dam and Irrigation Company (hereinafter called the Parent Company) were formally and officially approved and confirmed by the then Secretary of the Interior at Washington, acting under and in conformity with the several Acts of Congress pertaining to irrigation in

the arid states and territories, so-called.”

“(3) The said Rio Grande Irrigation and Land Company, Limited, (hereinafter called the English Company), was formed with a capital of Five Hundred Thousand Pounds Sterling (£500,000) to finance the Parent Company.”

“(4) The English Company leased the Parent Company’s franchise and undertaking and purchased the property and acquired control of the whole of the capital stock of the Parent Company, such control being granted as security for the funds advanced and to be advanced by the English Company to the Parent Company.”

“(5) The English Company entered into certain underwriting contracts guaranteeing working capital for the Parent Company, and issued a prospectus inviting subscriptions to One Hundred Thousand Pounds Sterling (£100,000), eight per cent., Cumulative Preference Shares at par, and Fifty Thousand Pounds Sterling (£50,000), five per cent. First Mortgage Debenture-Bonds, part of an authorized issue of One Hundred Thousand Pounds Sterling (£100,000) of five per cent. First Mortgage Debenture-Bonds.”

“(6) On issue and subsequently, Thirty Thousand Five Hundred Pounds Sterling (£30,500) of the said Preference Shares and Forty-Seven Thousand Pounds Sterling (£47,000) of the said Debenture-Bonds were subscribed and allotted.”

“(7) In April, 1900, the English Company, having expended the whole of its paid-up capital, and not being able to enforce payment of all moneys guaranteed under its underwriting contracts, or otherwise to raise further capital, owing to certain litigation, more particularly referred to hereinafter, went into liquidation and the English debenture holders foreclosed.”

“(8) By virtue of its Charter of Incorporation and by the official approval, confirmation, and consent of the said Secretary of the Interior, the Parent Company had

acquired the right to impound and appropriate the unappropriated flood waters of the Rio Grande (river) for irrigation and other beneficial purposes in the Rio Grande valley in Sierra and Doña Ana Counties aforesaid, in the said Territory of New Mexico, and certain other exclusive rights of way and other privileges and special concessions more particularly set out in the said Charter of Incorporation and provided by certain special Territorial and Congressional enactments, together with the right and title to certain public lands for reservoirs and other purposes.”

“(9) Approximately, One Hundred Thousand Pounds Sterling (£100,000) has been expended in securing, establishing, and maintaining the said exclusive privileges, rights of way, concessions, etc., and on irrigation works and on legal and other necessary matters.”

“(10) Certain United States Federal Officials interested in a rival irrigation project, commonly known as the International (El Paso) Dam Project, promoted by Brigadier-General Anson Mills, retired, Commissioner, for the United States, of the American (and Mexican) International (Water) Boundary Commission, and by other parties associated with him, with the object of supplying free water for the irrigation of certain lands in the El Paso valley in the State of Texas and the Republic of Mexico, such free water to be provided by means of a proposed storage dam to be built by the United States across the Rio Grande (river) at a point in the El Paso canyon just above the city of El Paso, Texas, recognizing that the Parent Company's prior right to impound and appropriate the said flood waters of the Rio Grande in New Mexico, one hundred (100) miles above the said city of El Paso, Texas, rendered the said International dam project impracticable, prevailed upon the Federal authorities, during President McKinley's first administration, to institute proceedings to enjoin the Parent Company and the English Company from completing the proposed irrigation

works in the said Counties of Sierra and Doña Ana, for the appropriation, storage, and distribution of the said waters of the Rio Grande, on the alleged ground that:—

(a) The Rio Grande is a navigable river in New Mexico;

(b) The Parent Company's works would constructively be a violation by the United States of its treaty obligations to Mexico."

"(11) Prior to the incorporation of the Parent Company, (United States) Government Engineers investigated the Rio Grande for the purpose of determining if it be navigable, and Major O. H. Ernst, in his report to the Secretary of War, in 1889, declared that the Rio Grande is not navigable, and that it cannot be made so by open channel improvements."

"(12) Since 1866, the laws of New Mexico have specifically provided for the incorporation of companies for the construction of irrigation works, and the Federal Act of 1867 and subsequent similar Federal enactments provided for the approval of maps of rights of way for irrigation reservoirs and canals in New Mexico."

"(13) The Congress of the United States, by reservation and survey of reservoir sites on the Rio Grande in New Mexico and by the appropriation of large sums of money for such surveys, had clearly indicated the purpose of the General Government of the United States to treat the waters of the Rio Grande as suitable for irrigation only."

"(14) In 1866 the Government of the United States, by Congressional action, surrendered its riparian rights in the so-called arid states and territories, New Mexico included, and prior to 1866 it had become established that the common law doctrine of riparian rights was unsuited to the conditions of the said arid states and territories. New rules had grown up under local legislation and custom, vast irrigation interests had been created, with the appro-

val of the Federal Government, and Congress had confirmed the right of prior appropriation of waters in the arid West, where the same is recognized and acknowledged by local customs and laws, and by the decisions of the courts.”

“(15) In 1887 a Territorial Act was passed, giving authority to corporations to construct reservoirs and canals in New Mexico, and for such purpose to take and divert the waters of any stream, lake or spring in the Territory. This legislation is not peculiar to New Mexico, and Congress, by various acts, has recognized, confirmed, and authorized such local legislation.”

“(16) *By Act of Congress, 1888, reservoir sites for irrigation purposes along the Rio Grande in New Mexico were set aside and reserved from sale or location. Subsequently, by Congressional enactment, these reservoir sites were thrown open to private location and the legislature of New Mexico was authorized to prescribe rules and regulations and to fix water charges.*”

“(17) Prior to 1897, when the proceedings against the Parent Company were instituted, there never had been any attempt on the part of the Government of the United States to interfere with the use of the waters of the Rio Grande for irrigation purposes, and it was not until long after the organization of the Parent Company’s enterprise *and after the Company’s plans had been approved by the Secretary of the interior*, and after large sums had been expended on its works, and otherwise in the interest of the Company’s undertaking, that General Anson Mills, ‘Commissioner,’ for the United States, of the International (Water) Boundary Commission, and his associate promoters of the International dam project, by means of misleading statements as to the alleged navigability of the Rio Grande in New Mexico, and as to the alleged immoral purpose of the Parent Company and the English Company, prevailed upon the Federal Government to institute proceedings to enjoin the completion of the said irrigation works.”

“(18) Since the said suit was instituted, large irrigation works have been completed on the Rio Pecos, one of the principal American tributaries to the Rio Grande, and almost the entire flow of the Rio Grande in Colorado has been appropriated for irrigation, *without Federal interference.*”

“(19) The people of the Territory of New Mexico, by weighty petitions and by resolutions of public bodies, Chambers of Commerce, Boards of Trade, etc., repeatedly have prayed the Federal Government to abandon said suit and to accept as final the findings of the Territorial Courts in the premises. The Territory of New Mexico, by its Solicitor General, filed with the Trial Court a motion to intervene as a co-defendant, on the ground that ‘*it has an interest in said litigation and in the success of the defendants and desired to unite with the said defendants in resisting the claim of the plaintiffs in the said suit.*’ ”

“(20) From evidence submitted to the court in said suit, it is clear that the said suit was instituted solely at the instigation of General Anson Mills, who had affirmed under oath that ‘*at times periodically each year the volume of water is so great that steamboats could navigate it [the Río Grande] for hundreds of miles both above and below El Paso.*’ ”

“(21) During Mr. Cleveland’s last administration General Anson Mills repeatedly urged that the Parent Company’s rights should be cancelled or withdrawn.”

“(22) On December 19, 1896, the Honorable D. R. Francis, Secretary of the Interior at Washington, wrote to the United States Secretary of State, saying:—

‘The application of the Rio Grande Dam and Irrigation Company was approved by my predecessor

* * * *in my opinion, I have no right, under the law, to revoke this approval.* It has been decided by the Supreme Court of the United States, in the case of Noble vs. Union River Logging Railway Company

(147 U. S. 163), that the approval of the Secretary of the Interior of a right of way * * * cannot be revoked by his successor, and upon the principle therein declared I deem it beyond my authority to revoke my predecessor's approval of the maps filed by the Rio Grande Dam and Irrigation Company. *Assuming that I had such power, I submit to you whether or not the exercise of it would be proper in view of the opinion of the Attorney General of your Department.*' "

"(23) After President Cleveland retired from office—in fact almost immediately after President McKinley's inauguration in 1897, General Anson Mills and his associate promoters of the "International" dam project renewed their attempts to have the Parent Company's reservoir rights and rights of way revoked."

"(24) In a letter dated February 19, 1897, Mr. McKinley's Solicitor General wrote to the Secretary of State, who, through the Secretary of War, had called upon the Attorney General for an opinion as to 'whether under the existing state of the law there is any way for the United States Authorities to prevent the construction of said dam' (the Parent Company's proposed storage dam at Elephant Butte, New Mexico), saying:—

'The answer to your inquiry is obvious if the stream be a navigable one. *This you assert and I assume it.* The remedy of the United States is by injunction. Upon being advised that the obstruction has been or is about to be erected, I shall at once order proper proceedings to be instituted by the United States District Attorney.' "

"(25) Upon further correspondence with General Anson Mills, the said suit was accordingly instituted in May, 1897. In due course the trial court held that:—

'The Rio Grande in New Mexico is not a navigable river. Under treaties with Mexico, each Republic reserved all rights within its own territorial limits.

This would have been so upon principles of International law. The soil of the United States is not burdened with a servitude in favor of Mexico in respect to any duty to so discharge the water as to permit or preserve the navigability of the Rio Grande. That:—

“The power to control and regulate the use of waters of non-navigable streams is exercised by States and Territories, and therefore the diversion of such waters (by the Parent Company for irrigation in New Mexico) is not a violation of any Act of Congress.’

“(26) The Attorney General ordered an appeal to the Supreme Court of New Mexico and that court upheld the findings of the trial court on all points, and declared that:—

‘It is perfectly clear that the Rio Grande above El Paso has never been used as a navigable stream for commercial intercourse in any manner whatever, and that it is not now capable of being so used; on the other hand, it has been, from the earliest times of which we have any knowledge, used as a source of water for irrigation. * * * It was the first portion of this region to be occupied and settled by civilized man, and the population of this valley has always been, and is now, absolutely dependent for means of livelihood and subsistence upon the use of the waters of this river for irrigation of their fields and crops. Never until the present time has any question been raised by any one as to interference with any use of the river for purposes of navigation. *Indeed, it appears from the affidavits and reports presented in support of the bill in this case that the objection now raised to the construction of the defendant’s dam grows out of the proposed construction of an International dam and reservoir at El Paso.* * * * *The investigation of the feasibility of such a dam and reservoir is being made on behalf of the United States*

* * * thus evidencing the deliberate intention of the Government, by its political department, to take measures, not for the purpose of improving the navigability of this river, but of permanently obstructing it at a point far below the site of the defendant's works, and thus to devote the stream to irrigation [below New Mexico's southern boundary] instead of navigation * * * that is to say, in order to render feasible the storage of water for irrigation at El Paso, it is essential to prohibit all similar structures along the river at points above * * * it seems clearly apparent that the object of this proceeding is not to secure a public benefit from the navigation of the Rio Grande, but rather, under the guise of a question of navigability of the stream, to obtain an adjudication * * * in aid of one locality against another.'

'The work sought to be enjoined in this action is not a violation of any law of the United States or any treaty * * * the action of the lower court in dissolving the injunction and dismissing the bill of complaint is confirmed.' "

"(27) The Attorney General appealed to the Supreme Court of the United States, and in due course that court decided all points of law in the defendant's favor and declared that:—

'The Rio Grande within the limits of New Mexico is not a navigable stream.' That.

'Neither is it necessary to consider the treaty stipulations between this country and Mexico.' That,

'As it has early developed that mining interests in certain states, and the reclamation of arid lands in others, compelled a departure from the common law rule, and justified the appropriation of flowing waters for mining purposes and the reclamation of arid lands, there has come to be recognized in those states a different rule—a rule which permits the ap-

appropriation of waters of flowing streams for other than domestic purposes.' That,

'It is also true that as to every stream within its domain a state may change the common law rule permit the appropriation of the flowing waters for such purposes as it deems wise.' That,

'The power to change and permit any specific and separate appropriation of the waters of a stream belongs also to the legislature of a territory—such power being limited by the superior power of the General Government to secure the uninterrupted navigability of all navigable streams within the limits of the United States.' "

"(28) The Federal Supreme Court, having decided all points of law in favor of the Parent Company, and having disposed of the allegations of the plaintiff as to the alleged navigability of the Rio Grande in New Mexico and as to Mexico's alleged treaty rights, said:—

'We may, therefore, properly limit our inquiry to the effect of the proposed dam and appropriation of waters upon the navigability of the Rio Grande within the present limits of navigability.' [Viz., for a distance of 170 miles between Brownsville and Rio Grande City, Texas, over 1,200 miles below the Parent Company's dam site at Elephant Butte, New Mexico.]

"(29) The Supreme Court of the United States reversed the decree of the lower courts, and remanded the cause to the trial court for inquiry as to the one question of fact, viz.: 'Whether the intended acts of the defendants in the construction of the dam and in appropriating the waters of the Rio Grande will substantially diminish the navigability of that stream within the present limits of navigability, and if so, to enter a decree restraining those acts to the extent they will so diminish.' "

"(30) Evidence as to the said question of fact was taken by the trial court, acting as a court of inquiry, in

December, 1899. Thirty-three witnesses were examined and a large number of affidavits, reports, and public documents and other forms of evidence were submitted. In January, 1900, the trial court dismissed the Government's bill of complaint and decreed that:—

'The intended acts of the defendant in the construction of a dam or dams or reservoir, and in appropriating the waters of the Rio Grande will not substantially diminish the navigability of that stream within the present limits of navigability.' "

"(31) Subsequently the Attorney General ordered a further appeal to the Supreme Court of the United States; and counsel for the Government most unwarrantably alleged that the Judge of the trial court and the Associate Justices of the Supreme Court of New Mexico had been influenced by local interests; whereupon the Federal Supreme Court a second time remanded the cause to the Trial Court for further inquiry as to the said question of fact."

"(32) Over a year later the Government made an application to the trial court, asking to be allowed to file a supplemental bill of complaint, *praying that the Parent Company's rights be forfeited because its proposed irrigation works had not been completed within the five years prescribed by law.*"

"(33) The Government's motion, to so supplement its bill, carried on its face allegations indicating that it was to be used as an application for leave to file such a supplemental bill, but, without notice to the defendants, the said motion was granted the same day it was filed with the court. The record is bare of any proper notice of application for leave to file said supplemental bill."

"(34) On the 19th day of October, 1903, Dr. Nathan Boyd, a citizen of the Territory of New Mexico, and the duly appointed Receiver for the holders for the said De-benture-Bonds issued by the English Company, ascertained

the judge was in a position to be appointed to the form of the defendant and the U.S. Attorney for N.M. confessed before drunk that the order from the City Council was that Boyd was to be "dropped" one way or another.

by chance that leave to file the said supplemental bill had been granted by the court, and that judgment by default had been entered against the defendant company. Dr. Boyd, at his own expense, at once employed fresh counsel and filed a motion with the trial court, praying that the said decree be revoked and set aside on the ground that the filing of such a supplemental bill was irregular, and that the allegations therein were inconsistent with and opposed to the allegations set forth in the Government's original bill."

"(35) The motion was heard on the 19th day of December, 1903, and on the 29th day of January, 1904, the court overruled the said motion to vacate the said decree. Whereupon Dr. Boyd ordered an appeal to the Supreme Court of New Mexico, where the cause is now pending,"

"(36) When said motion to vacate the said decree was heard on the 19th of December, 1903, counsel for the plaintiff and counsel for the defendant agreed, in the presence of the judge of the trial court, that, in order to have the matter disposed of at the earliest possible date, any appeal to the higher courts should be expedited in all ways; but, subsequently, when counsel for the defendants urged the United States District Attorney, counsel for the plaintiff, to unite in an application to the Supreme Court of New Mexico, praying that an early date for the trial be fixed, the said United States District Attorney said that he had been ordered by the Attorney General 'to accord no favors to the defendants and to contest vigorously every move to correct the decision of the trial court.'

"Wherefore, the undersigned, now being convinced that the said suit to destroy their rights has not been maintained in good faith, and that it is the fixed determination of the Secretary of State and the Attorney General of the United States to cancel such rights one way or another, respectfully urge that the British Government, by its Ambassador at Washington, at once take steps to protect such rights by

By means of grossly dishonest mis-
takes in his memoranda Secy. Root
managed until recently to keep Mr. Buhels
Foreign Office quiet ⁵⁷: now, however, arbitration
having the same submitted at an early date to the adjudica-
tion of the Hague Tribunal." *is insisted on.*

When the petition was presented, Mr. Hay was Secretary of State in Mr. Roosevelt's cabinet. In the absence of copies of the correspondence that passed between His Majesty's Ambassador at Washington and Secretary Hay, the nature of the excuse given for not promptly consenting to the petitioner's prayer that the matter be referred to the Hague Tribunal cannot be stated. But, looking to the fact that any form of inquiry, whether at the Hague or elsewhere, into the history of the Elephant Butte suit, *cum* International (El Paso) dam scandal, could not fail to reveal the discreditable part Secretary Hay himself had played in supporting General Anson Mills' scheme, and in condoning the latter's crime of perjury, we can reasonably assume that Mr. Hay was prolific in his explanations why formal consideration of the matter should be delayed.

At no time in the history of this country have we had a Secretary of State more complacently amenable to the influence of British diplomacy, than was Mr. John Hay. His subserviency to the demands of the British Foreign Office was more than notable during the Boer war, and we can readily understand that, while Secretary Hay was alive, His Majesty's Government was loath to press unduly the claims of the British bondholders.

Many Americans, misled by the fulsome praise of party organs, and by their admiration for Mr. Hay's noblest

literary achievement, "Little Breeches," probably look upon Mr. Hay as the greatest American statesman of our own time. Now that he is dead, and, "gone to his long account," and where the plea of "no jurisdiction" availeth not, I am naturally somewhat reluctant to criticise his unseemly conduct. But, "by criticising the dead we may sometimes help the living," and, therefore, I have not refrained from commenting on his extraordinary refusal to investigate the charges against his subordinate in office, General Anson Mills.

With Secretary Hay's death, however, and the return of the English Liberal Party to power, the pressing demands of the British bondholders promise to become effective. Secretary Root's "Memorandum," or statement of case for the United States, has called forth a very decided expression of opinion from the legal advisers to the British Foreign Office, and there is now, I understand, good reason to believe that, in view of Mr. Root's admissions, His Majesty's Ambassador will be instructed to insist on immediate consideration of the British bondholders' case, and that Sir Edward Grey will refuse to be put off by diplomatic evasions. Secretary Root's "Memorandum" reads as follows:—

"MEMORANDUM."

"The Rio Grande Irrigation and land Company, Limited, after its formation in May, 1896, began active operations in so far as to convey to Elephant Butte a quantity of

cement and construct partially an abutment at one end of the proposed dam. The Mexican authorities complained to the United States Government and interested Secretary Olney in their case. It appears further that claims to a very large amount for damages for the diversion of water from the river were filed in the United States Department by Mexican citizens, who had property in Juarez and the El Paso valley, on the Mexican side thereof. At the request of Secretary Olney, the Department of Justice prepared and filed a bill in equity for injunction to restrain the said companies from further prosecuting their work. The bill was put upon the theory that the diversion of the water had a direct tendency to impair a navigable stream, and, therefore, was contrary to law. This bill was filed in the United States District Court for the third district of New Mexico. A temporary injunction was issued by the Judge of the Court. The defendants at once appeared, answered separately, filed a number of affidavits, and moved to dissolve the injunction and dismiss the bill. This motion was heard on affidavits, public documents, personal knowledge of the Judge, and in fact pretty nearly every sort of matter that counsel on either side could think of, but no evidence. The Judge dissolved the injunction and dismissed the bill."

"Appeal was taken to the Supreme Court of New Mexico, which affirmed the decision of the district court. The case was then brought to the United States Supreme Court, and is reported in the 174th U. S. In substance, the Court held the Rio Grande to be a navigable stream; reversed the decision of both courts, remanding the case for trial on its merits."

"The case was then put in charge of one of the officers of the Department of Justice, who endeavored to procure testimony tending to show that which the Supreme Court held to be the question in the case, namely, that the diversion of water proposed by defendants had a tendency to,

and did, impair the navigability of the stream in that portion of the stream where it was navigable."

"The time permitted for the preparation of the case was utterly inadequate and, notwithstanding the protest of the counsel for the United States, this great case was forced to trial in the early autumn after the decision of the Supreme Court in May. It is a peculiarity of practice in equity cases in the Territorial Courts that findings of fact by the Court cannot be disputed, and that on an appeal to the United States Supreme Court the evidence will not be considered and that no attempt will be made to go behind the findings of the trial judge."

"Opposition developed in the Territory of New Mexico at the time against the Federal Government for attempting to stop this company's operations, to such an extent that it was embarrassing to the counsel for the Government to conduct the trial. The findings of fact prepared at the request of the court by counsel for defendants were largely adopted."

"The court held against the Government and dismissed the bill. Counsel for the Government at once protested, moved for a new trial, presented a showing of newly discovered testimony upon the most important phases of the case, all to no purpose. An appeal was again taken. The case was affirmed in the Supreme Court of New Mexico, brought to the United States Supreme Court and again heard there, and the decision reached that a fair trial on the merits was not had, that the United States had not been allowed opportunity to prepare its case for a trial on the merits, and the case was reversed with orders that both sides be allowed opportunity for a fair trial. 184 U. S., 416."

"That was the only attempt at a trial. The case went back to the Trial Court. No one appeared for defendants. The Act of Congress, permissive of the giving of dam and reservoir sites, and rights of way for irrigation ditches re-

quired that the work must be fully completed within five years, and under the circumstances, as about seven had elapsed since the dissolution of the injunction and no work had been done meanwhile, it was decided that the quickest way out of the matter would be through means of a supplemental bill with such averments. This was filed under the ordinary rules of the court. No one appeared. The court took the supplemental bill as confessed and decreed a forfeiture of the permit and an injunction permanent."

"About six months afterward, the Rio Grande Irrigation and Land Company secured the services of certain attorneys, who moved to open the case. This the Court denied, and from this denial the defendants appealed to the Supreme Court of New Mexico. The motion was argued and submitted many months ago, but does not appear to have been decided yet."

"After the second reversal of the case by the United States Supreme Court, the Reclamation Act was passed by Congress and the head of the Division of the Bureau of Geological Survey having irrigation matters in charge went down into Mexico and partly decided to construct a Government dam, etc., on nearly the same site."

"The United States Department is constrained to deny that the suit in question has ever been tried on its merits, and holds that it is still pending in the Federal Courts."

Perusal of the above "Memorandum," signed by Mr. Root as Secretary of State for the United States, will, I am sure, convince you that it was not prepared by him,^r or by any honest subordinate in his Department. The probabilities are that, after Mr. Hay's death, when His Majesty's Ambassador again addressed our Department of State in reference to the matter, Mr. Root, not knowing anything

about it, called upon General Anson Mills for information, and that Mills and Burch promptly united in an effort to protect themselves from exposure, and to that end gave an entirely misleading account of the case and prepared the above quoted absurd "Memorandum," which Mr. Root signed in the ordinary routine of business and then handed to the British Ambassador. As a matter of fact, the "Memorandum" bears internal evidence of having been drawn by Burch, or by some other equally poor lawyer. Mr. Root is a highly educated man, and he is reputed to be one of our greatest jurists, so it is inconceivable that he could have drawn such a hopelessly asinine and dishonest document.

In view of the incontestible character of the facts set out in the British petition, facts readily susceptible of proof and fully sustained by official documents on file in Mr. Root's own Department, it goes without saying that he himself could not have prepared such an utterly puerile defense of his Government's conduct in the premises. Manifestly the "Memorandum" was drawn by an incompetent and partisan hand; but, in calling attention to its most glaring inconsistencies and misstatements, I have, for the sake of brevity, referred to it as being Mr. Root's "Memorandum," and as though it had been drawn by him.

The "Memorandum" was so worded as to imply that the Elephant Butte suit was instituted because of complaints made by the Mexican Government. From this it would seem that Mr. Root is ignorant of the terms of At-

torney General Harmon's opinion relative to Mexico's alleged pretensions and claims, and of the fact that the Federal Supreme Court upheld such opinion; likewise of the further fact that for many years the people of El Paso, Texas, and the farmers on the American side of the Rio Grande in the El Paso valley, have justly complained of the action of the Mexican population on the Mexican side of the river in diverting all the water of the stream during the dry season. It is but reasonable to suppose that Mr. Root does not know that in 1880, Mr. Evarts, our then Secretary of State, wrote to Mr. Morgan, the United States Minister to Mexico, saying:—

“I transmit herewith for your information * * a copy of a letter of the 10th, ult., together with its various enclosures, from the Governor of the State of Texas, asking the intervention of the General Government in a matter of vital importance to the citizens of that State living on the Eastern (Texas) shore of the Rio Grande.”

“The enclosures, as you will see, consist of the statement of the County Judge of El Paso County, and a petition signed by prominent citizens of San Elizario and Socorro [American towns in the El Paso valley].”

“The ground of complaint as alleged is that the Mexicans engaged in agricultural pursuits on the Mexican shore of the river, are in the habit of diverting all of the water that comes down the river, during the dry season, into their ditches, thereby preventing

our citizens from getting sufficient water to irrigate their crops.”

“I have addressed a note to the Mexican Minister at this capital, requesting him to bring the matter to the attention of his Government, with a view to obtaining, if possible, alleviations from these annoyances.”

“You will therefore investigate the matter as carefully and thoroughly as possible, and will report the result to the Department.”

In his note to the Mexican Minister at Washington, Mr. Evarts said:—

“I have the honor to solicit your most earnest attention to a matter of vital importance to the citizens of the State of Texas engaged in agricultural pursuits on the Eastern shore of the Rio Grande.”

“The trouble complained of appears to be the result of the action of the Mexican population on the Western shore of the river in diverting into ditches dug for that purpose the small quantity of water that finds its way down during the dry season, thereby totally depriving the agriculturists on the Eastern, or Texas, shore of the means of irrigating their crops, and thus cutting off their sole means of livelihood.”

[Vol. 1, Wharton's International Digest, Sec. 20, pp. 63-5.]

The above quotations from Secretary Evart's letters expose the absurdity of the Mexican claims, and show that

prior to the appointment of General Anson Mills as "Commissioner," *for the United States*, of the International (Water) Boundary Commission, it was the United States and not Mexico that complained of the "diversion of water from the river" by her neighbors across the Rio Grande.

But, when General Anson Mills appeared on the scene with his "International" dam scheme, the question at issue between the two Governments changed entirely. Under his patriotic and fostering care the Mexicans soon learned of their "great losses," of their previously unknown rights under Mexico's treaties with this country, and of the (alleged) obligations of our General Government in consequence thereof. General Anson Mills had "an axe to grind."

Shortly after General Anson Mills began to agitate and scheme for an "International" dam, to be built in the El Paso cañon to store the flood waters of the Rio Grande, the first batch of Mexican claims was presented by the Mexican Minister at Washington.

According to General Mills' own statement, he first sought to carry into effect a plan whereby the Governments of the two Republics would jointly bear the cost of building the proposed "International" dam. In attempting to promote his "International" dam scheme, he made some interesting and misleading admissions before the House Committee on Irrigation and Committee on Foreign Affairs.

When he testified before the Committee on Foreign Affairs, he said:—

“I was requested by some of my friends to project a remedy for the decreasing water in the river.

* * * I came to Washington and had an interview with Major Powell. * * * He advised me to see the Secretary of State. I went to the Secretary of State and had a verbal [*sic*] interview with him. *

* * Later on Major Powell induced the Secretary of War to detail me * * * to make the necessary investigations to determine whether such a scheme [a storage dam at El Paso] was practicable. * * *

To cultivate friendly investigations in the matter between the people of this side and the people of Mexico, so in case a dam should prove practicable *I could find out whether the Mexican population would assent to it.*

* * * When I went to El Paso * * * I found a Mexican Federal engineer by the name of Garfias. *He asked permission* from his Government and received orders to co-operate with me in all of my investigations.

which he did. We concluded, after our investigations, that the project was feasible. * * *

I furnished him a copy of all the plans, specifications and estimates, which he carried to the City of Mexico, and he reported to me on his return that he had had an interview with the President and the Minister of Public Works, and the Minister of Foreign Relations, and had fully explained the matter, and they had expressed to

him the opinion that the project ought to be carried out, and that they would forward these papers to our Government with such a recommendation; but that it would be necessary to refer the matter to a lawyer for investigation, and report on the legal aspect. He has kept them in his hands, however, for nearly three months. They are a very slow people there; they do everything tomorrow, there is no telling when they will get through. There is no doubt, however, that they will approve the project. *They propose to bear one-half the expense of constructing the dam.*” [Testimony in re Bill H. R. 9710, House Com. Foreign Affairs, 1901, pp. 223-6, p. 262.]

From the above it is seen how the proposal to build an “International” (El Paso) Dam originated with General Anson Mills and not with Mexico. At this stage he informs the American Government that Mexico “Proposed to bear one-half the expense of constructing the dam,” but, according to his report to the Secretary of State at Washington, Mexico did not propose to do anything of the kind. In such report he said.—

“My first impulse was to insist that Mexico should bear a portion of the pecuniary burden; but * * * *the Mexican Commissioner would not agree to this.*

* * Even if Mexico were willing to share to the extent of \$400,000 or \$500,000, under a joint construction, it would be economical for the United States to take it alone [sic] and bear all the burden. * * *

With a joint administration with Mexico, I dare say both time and cost would be much increased. I felt, therefore, constrained to join with Mr. Osorno in the report I have submitted." [Sen. Doc., 229, pp. 33-4.]

It is well known that the Mexican Government declined to contribute to the expense of constructing General Anson Mills' proposed "International" dam. Doubtless the Mexican officials failed to see why their Government should contribute to the cost of a work so obviously intended to enrich a group of land speculators.

Finding the Mexican authorities obdurate, General Anson Mills and his associate promoters perforce had to hit upon some plan or other that would enable them to get a bill through Congress, whereby the United States would bear the whole of the expense of building the proposed "International" dam. Hence the Mexican claims, which were filed at the psychologic moment. The manner in which these claims were promoted, and pressed at Washington, is to this day a standing joke among the people of El Paso. General Anson Mills and his associates were so open and active in their efforts to induce the land owners on the Mexican side of the river to consent to file such claims for alleged damage that the absurdity of the whole affair was a matter of common comment and ridicule among the people of the El Paso valley on both sides of the river.

General Anson Mills and his associates seduced many of the people of El Paso into lending their active support to "the good cause." Specious promises were made, and

all were told what a "good thing it would be for El Paso" to have some millions of Uncle Sam's dollars expended on construction work so near at hand. All were assured that the dam was a "sure thing," if they would help by contributing to the cost of sending an influential "lobby" on to Washington, and to the expense of employing counsel to assist in the fight against our company.

The quotations from Secretary Evart's letters are instructive, inasmuch as they show that prior to 1880, prior to the large increase of Rio Grande irrigation in Colorado, the flow of the river at El Paso, during the dry season, did not suffice for the irrigation of the lands then under cultivation on both sides of the river in the El Paso valley.

Parenthetically, it may be stated that, owing to political changes, or to other indirect causes, nothing satisfactory, so far as the interests of the American farmers were concerned, ever resulted from Secretary Evarts' correspondence, as above; for only a few years later the Mexicans greatly improved their facilities for appropriating the whole flow of the river, during the dry season, by building a cement diverting dam entirely across the river channel a short distance above the head of the American canal, so that even now it is only when the flow of the stream is so great that the Mexicans' dam and canal cannot divert the whole of the water that the farmers on the American side of the river get any at all.

The Mexicans had a perfect right to take water out of the river by means of irrigation ditches at any point

below the southern boundary of New Mexico (just above the City of El Paso), from whence the river channel becomes the boundary line between the two Republics; but they had no right whatever, under treaty or otherwise, to build and maintain a diverting dam entirely across the river.

The above quotations from Secretary Evarts' letters, the well known facts of the case, Attorney General Harmon's opinion, the decision of the Supreme Court of the United States, all prove that the Mexican claims and pretensions were wholly unwarranted, and that Mr. Root's reference to them in his "Memorandum" was ill advised, at best.

Mr. Root says that the Government's bill was prepared and filed at the request of Secretary Olney. Here again Mr. Root is inaccurate; such bill was not prepared or filed until some time after Mr. Olney, President Cleveland's Secretary of State, had been succeeded in office by Mr. Alger, President McKinley's Secretary of State.

Mr. Root says:—

"The bill was put upon the theory that the diversion of the water had a direct tendency to impair a navigable stream, and therefore was contrary to law."

Our irrigation works were then in course of construction, and it may be taken for granted that he refers to our diversion dam or proposed storage of water at Elephant Butte. But would such diversion have been con-

trary to law? Clearly not, as the reports of the Government engineers and the decisions of the courts conclusively prove. Our franchise and charter rights were legally acquired under the laws of New Mexico, and our maps and plans had officially been approved by Mr. Cleveland's Secretary of the Interior, Mr. Hoke Smith, who unquestionably had jurisdiction under the Federal Statutes that provide for the approval of maps of right of way for irrigation reservoirs and canals.

By direction of the General Government, Federal engineers had investigated the Rio Grande for the purpose of determining if it could be made navigable, and they had reported that "The Rio Grande is not navigable, and cannot be made so by open channel improvements." Prior to the incorporation of our company, Congress by survey and by reservation of reservoir sites, on the Rio Grande in New Mexico, had clearly indicated its purpose to treat the waters of the river as suitable for irrigation and domestic purposes only. An Act of the Territorial Legislature had given authority to corporations to construct reservoirs and canals, and to take and divert the water of any stream, lake, or spring in New Mexico; and such Territorial Act had been approved and confirmed by the General Government. The reservoir sites, on the Rio Grande in New Mexico, that previously had been set aside and reserved by the Government, had been thrown open to private and corporate location, and the Territorial Legislature had been authorized by Congress to prescribe rules and regulations

and to fix water charges.

Large irrigation works had been carried out on the Rio Pecos, the principal tributary to the Rio Grande flowing from the United States, a relatively short distance above the alleged head of navigation at Rio Grande City, Texas, and almost the entire flow of the Rio Grande in Colorado has been appropriated for irrigation, and without Federal interference.

Numerous official reports and other documents on file in the Federal departments at Washington, prove beyond the possibility of honest doubt that the Elephant Butte suit was instigated by General Anson Mills, and that it was instituted, not for the protection of commerce, as alleged, but solely in the interests of the "International" dam scheme. The decision of the Territorial Supreme Court of New Mexico, as in part quoted in the British Petition, is conclusive upon this point; notwithstanding that Attorney General Griggs, in a letter to the Secretary of State, *apropos* of one of the International dam bills—so warmly supported by Secretary Hay, said:—

"I have examined the proposed bill, and see no objection to it from the point of view which you have indicated. I am not sufficiently acquainted with the material facts to be able to give you an opinion upon the general subject of the projected international dam. That enterprise involves so many questions of scientific and engineering knowledge that I do not feel competent to express an opinion upon it * * *

“I would point out to you, however, that the sole basis of jurisdiction in the Federal courts, so far as the United States Government is concerned, is interference with the navigable capacity of the stream. The use of the waters of the river for purposes of irrigation is not a use connected with the regulation of commerce, and the Act under which the present suit is being maintained * * * is one solely for the protection of commerce.”

Here we find Attorney General Griggs asserting, in a letter dated March 15, 1900, in unmistakable terms, that the Elephant Butte suit was “maintained solely for the protection of commerce;” but, in the November previous (1899), Marsden C. Burch, who had been sent out to New Mexico, by Attorney General Griggs, to argue the case for the Government before the trial court, had offered to compromise the suit on the basis of terms, authorized by Griggs himself, that prove absolutely that Mr. Griggs knew full well the suit was being maintained solely in the interest of General Anson Mills’ scheme and for no other purpose.

At a conference held at El Paso, in November, 1899, when Burch, as counsel for the Government, submitted Mr. Griggs proposal for a compromise, the terms offered (according to the files of the El Paso papers, one of which I quote) were as follows:—The Government would drop the suit, that is to say, would not appeal from the decision of the trial court, if we agreed to

*“Recognize the prior right of the people of the valley of El Paso, Mexican as well as American, to a prior use of the waters of the Rio Grande, and use all reasonable efforts to procure, by Territorial Legislation or International Treaty between the United States and Mexico * * * the prior right of the people of El Paso, both Mexican and American, to a perpetual use of a sufficiency of water to fill yearly the proposed reservoir comprised in the International Dam above El Paso.”*

A cablegram was dispatched to London asking for authority to accept the Government's terms. Such cablegram, which did not fully reveal the iniquity of the conditions named, when de-coded, read as follows:—

“Government's representatives in conference agree Government abandon action, official sanction and protection to be extended to company provided company consents to undertake construction of sufficient structures to furnish residents of El Paso and Juarez in a fair proportion of water without discrimination in favor of New Mexico. Company's rights to be guaranteed by new treaty between United States and Mexico, or by Act of Congress. If declined, suit will be continued and Government will carry to Supreme Court at Washington. If accepted suit must be postponed pending completion of arrangements and Government ratification. Advise as to course to be pursued.”

It is to be observed that nothing was said about pre-

serving the alleged navigability of the river. As you may recall, my co-directors in London were disposed to agree to anything that would get the company out of its difficulties, difficulties brought about by the Government's proceedings in the courts, which had invalidated our underwriting contracts for capital; but I urged delay until full particulars of the Government's proposal could reach us by mail. My cablegram in reply (November 24, 1899), when de-coded, read as follows:—

“Under no circumstances whatever postpone inquiry [trial] pending completion of arrangements. In the event of final terms not being satisfactory, which is likely to happen, valuable time would be entirely lost. If the Government appeal it will constitute convincing proof that action is only pretext. Send full details as to proposal. Despite shameful treatment English investors have received at hands of the Government, we purpose honorably doing justice to all parties concerned, whether above or below El Paso. Reverse would be altogether opposed to our policy. Storage reservoir at Elephant Butte and smaller dams at Selden and El Paso will suffice for whole valley.”

When full particulars of the Government's proposal reached me, I, at once, saw that acceptance of the terms offered would (by treaty with Mexico, or by Congressional action) lead to the inhibition of all storage dams above Elephant Butte on the Rio Grande and its tributaries in New Mexico; cede to Mexico and Texas a prior right to the

waters of the Rio Grande flowing from above El Paso, including waters to be impounded at Elephant Butte; and, to a large extent, render our reservoirs mere precipitating basins for the benefit of General Anson Mills' "International" reservoir at El Paso.

All of the Government's proposals for compromise have been more or less on the lines of those submitted by Burch at the El Paso conference in 1899. Needless to say, I have declined to entertain any such propositions. In seeking to arrange a compromise of the suit, Burch did not affect to be concerned in any way about the alleged navigability of the stream. He knew that he was acting in the interest of General Anson Mills' "International" dam scheme. Attorney General Griggs knew it, and Burch did not even pretend that he was not so acting.

The local papers and the Western press generally discussed at length the absurdity of the Government's position; and, of course, public opinion in New Mexico was very strongly opposed to the Government's irregular attitude in the premises.

Mr. Root, in his "Memorandum," says that: "Opposition developed in the Territory of New Mexico at the time against the Federal Government for attempting to stop the company's operations, *to such an extent that it was embarrassing to the counsel for the Government to conduct the trial.*"

Having regard to the purpose of the Government in thus seeking to rob the people of New Mexico of their "chief

source of maintenance," it is not at all surprising that such "opposition developed;" the surprising thing is that Burch was not lynched by the farmers of the valley above El Paso.

Mr. Root, in his "Memorandum," after briefly stating that the trial judge dismissed the Government's bill, and that on appeal to the Territorial Supreme Court the decree of the lower court was confirmed, goes on to say that on appeal to the Supreme Court of the United States the decisions of the lower courts were reversed and the cause was remanded for a new trial on its merits. Seemingly Mr. Root desires to convey the impression that the decision of the Federal Supreme Court constituted a complete victory for the Government. But, as already pointed out, it is a matter of record that the Federal Supreme Court decided all points of law in our favor, and merely reversed the decision of the lower court in respect to the dismissal of the injunction, and ordered a further inquiry as to the one question of fact at issue; namely, as to the effect, if any, the proposed works, if completed, would have upon the alleged navigability of the Rio Grande—over 1,200 miles below.

Mr. Root says, *the time permitted for the preparation of the case was entirely inadequate, and, notwithstanding the protest of counsel for the United States, THIS GREAT CASE was forced to trial in the early autumn after the decision of the Supreme Court in May.*" But it is again a matter of record that the decision of the Federal Supreme Court was handed down on May 22, 1899, and that

the cause did not come up before the trial court until December 12th of that year; thus allowing the Government nearly seven months for the preparation of its case, and in which to measure the Rio Grande floods.

The Rio Grande floods—from melting snows in the mountains above in the northern part of New Mexico and in Colorado usually begin late in June and generally last four or five weeks.

Theoretically, the Government was seeking to prove that the Rio Grande flood waters from above El Paso contribute substantially to the navigable capacity of the stream, over 1,200 miles below, where it is alleged to be navigable, and that such flood waters are not lost by evaporation and seepage before they can reach, in substantial quantities, and so-called head of navigation. All the evidence set out at such exceeding length in the Record of the Elephant Butte case, reports of Government engineers and others, oral testimony, and many affidavits, all, except, of course, General Anson Mills' famous masterpiece of perjury, went to prove that such flood waters from above El Paso *do not* contribute substantially to navigable waters below; and all that was left for the Government to do was again to measure such floods as they passed down stream between Elephant Butte and Rio Grande City, Texas, the so-called head of navigation.

If counsel for the Government honestly desired to determine whether or no any of such floods from above El Paso contribute substantially to the flow of the stream

below Rio Grande City, why were not the July floods of 1899 measured? Obviously, there was ample time in which to make such measurement, and thus to establish the truth or falsity of the Government's allegations. The truth is, counsel for the Government was merely seeking to keep the case tied up in the courts until he could force us to abandon our enterprise altogether, or to agree to a compromise that would concede to the proposed "International" reservoir a prior right to the flood waters of New Mexico's Rio Grande catchment area, or until an "International dam bill" could be "lobbied" through Congress, and our proposed irrigation works could thus be prohibited by Congressional enactment. Counsel for the Government knew quite well that few, if any, rivers in the West had received as much attention from expert Government engineers as had the Rio Grande; that engineers of the War Department, of the International (Water) Boundary Commission, of the United States Geological Survey, and of the United States Irrigation Bureau, had all investigated the characteristics of the stream, and that the result of such investigations had proved absolutely that the flood waters from above El Paso *do not* contribute substantially, or even appreciably, to the flow of the river below Rio Grande City, where the volume of water in the stream is derived almost entirely from the Rio Pecos and from large affluents from Mexico.

When the Elephant Butte case was heard the second time before the Federal Supreme Court, counsel for the

Government alleged in his brief that the Government engineers had not had an opportunity to investigate the river during the flood season. Such statement was wittingly false. The character of the Rio Grande floods had been carefully studied by various corps of Government engineers. Government hydrographic and measuring stations have been maintained on the Rio Grande for nearly fourteen years; and General Anson Mills himself, in his famous affidavit, wherein he affirmed that the Rio Grande is navigable for hundreds of miles below and above El Paso, had stated that he had "been engaged, under the Geological Survey, in taking the flow of the river for a full year at El Paso, Texas." In August, 1896, the Government engineers, engaged under the American and Mexican Commissioners of the International (Water) Boundary Commission, were instructed to "*Make thoroughly all investigations practicable as to the flow of the waters at different points on the Rio Grande and its tributaries.*"

One cannot but ask what the International (Water) Boundary Commission was created for if not to survey and investigate and measure the flow of the Rio Grande? Was it created solely to enable General Anson Mills to promote his "International" dam scheme at the expense of the General Government?

At the time counsel for the Government so strenuously contended before the Supreme Court of the United States that the Government engineers had not had an opportunity to investigate the river in flood season, the Elephant

Butte case had been pending in the courts for nearly four years; and, to quote Chief Justice Mills of the Supreme Court of New Mexico, "If the flow of the stream had not adequately been gauged, then no sufficient diligence had been shown by the Government in the case."

Secretary Root furthermore says that (in 1899) "*When the court held against the Government and dismissed the bill, counsel for the Government at once protested, moved for a new trial, and presented a showing of newly discovered testimony upon the most important phases of the case, all to no purpose.*"

In view of the fact that such allegation as that last above quoted has been made by Secretary Root, in an official "Memorandum" that we may suppose was intended to be taken seriously by the British Foreign Office, it is proper to consider it somewhat critically. As already shown, counsel for the Government had had nearly four years in which to secure and create evidence in support of the Government's bill, and (as the record shows) as the annual Rio Grande floods almost invariably occur between June 1 and the end of July, with, usually, some lesser floods in autumn, even in 1899 there was ample time and opportunity in which to measure the flow of the stream during the flood season. In December, 1899, when counsel for the Government so "protested and moved for a new trial," the court was asked to grant "*four months extension of time*" to enable the Government engineers to procure further evidence. But the Rio Grande was then practically

dry, and if the extension of time asked for had been granted the Government engineers would not have been able to measure the river while in flood, as the floods did not come until late in July following.

The "newly discovered testimony," referred to in Secretary Root's "Memorandum," was of no importance whatever. One Frank P. Clark, who said he built a small row-boat at El Paso, in which he had attempted to float down stream to Presidio del Norte, a distance of about 200 miles, had approached our attorneys, before the case was tried, and had offered, for a consideration, to testify in our behalf as to the disastrous nature of his attempted voyage, and generally as to the non-navigability of the Rio Grande. As we had an overwhelming mass of evidence in the way of official reports, etc., more than sufficient to establish our case, we had no use for Mr. Clark's services. Subsequently, after the case had been heard, Clark went to Burch, and at the latter's instance—and doubtless for a substantial consideration—made an affidavit to the effect that, in the Spring of 1881, he with three others had "navigated" the Rio Grande from El Paso to the mouth of the Rio Conchos, a distance of 205 miles, in a row-boat. But, as Mr. J. H. MacMahon had already testified before the court in detail as to his "voyage" in a row-boat from El Paso to a few miles above Presidio del Norte near the mouth of the Conchos, Clark's evidence was wholly unimportant.

Since 1899 several parties employed by the Government have made attempts to "navigate" the Rio Grande in row-

boats between El Paso and Presidio del Norte, but without success. It may also be mentioned that such attempts at navigation have always been made down stream; and that General Anson Mills' sometime chief engineer lost his life whilst attempting to "navigate" the shoals and rapids of the Rio Grande in a row-boat.

In referring to the Government's second appeal to the Federal Supreme Court, Secretary Root, in his "Memorandum," says: "*It was decided that a fair trial on the merits was not had, the United States had not been allowed opportunity to prepare its case for trial on the merits, and the case was reversed with orders that both side be allowed opportunity for a fair trial.*"

As I have already shown, the allegation that the Government did not have sufficient time in which properly to prepare its case is worse than absurd; but when we come to consider the fact that after the cause was remanded a second time so that it could again, and for the third time, be tried "on its merits," the Government made no attempt to perfect its case, and by its own discreditable methods defeated all my efforts to get a date fixed for trial, and especially when we know that the report made by the Government engineers sent out to measure the Rio Grande flood was suppressed for over a year, the mendacity of Mr. Root's statement becomes positively criminal.

Returning to the next unconsidered clause in the said "Memorandum," I find that in order fully to expose its absurdity, I shall have to go somewhat extensively into de-

tails. Mr. Root says:—

“The case went back to the trial court. No one appeared for the defendants. The Act of Congress, permissive of the giving of dam and reservoir sites, and rights of way for irrigation ditches, required that the work must be fully completed within five years, and, under the circumstances, as about seven had elapsed since the dissolution of the injunction, and no work had been done in the meanwhile, it was decided that the quickest way out of the matter would be through means of a supplemental bill with such averments.” . .

Here again we find the trail of the serpent—Burch. For, surely, no other Government official (except, perhaps, the great General Anson Mills, who is too illiterate to have drawn up the “Memorandum” signed by Secretary Root, its split infinitives nevertheless) could be so depraved as thus to attempt to gloss over and obscure the real facts of the case; or so stupid as to imagine that the legal advisers to the British Foreign Office could be misled by such obviously silly twaddle.

That the case went back to the trial court is true enough, and that it was sent back because of Burch’s infamous allegations as above recited we know; but the statement that “No one appeared for the defendants” is absolutely false in the sense intended.

It was well known by all concerned that I was, as Burch said in one of his letters, “the chief person in authority,” and my correspondence with the attorneys of

of record; with Miguel Otero, then Governor of New Mexico; with Mr. Edward L. Bartlett, then Solicitor General of New Mexico; with the Honorable B. S. Rodey, then the Territory's Delegate to Congress; shows that I again and again endeavored to get a date fixed for trial, and that for some reason or other the trial judge elected to hold the matter up—probably in deference to the wishes or commands of “Special counsel for the Government.”

When this whole matter comes to be investigated, as it will soon, either by order of the President or of the Senate, I am quite certain that Mr. W. B. Childers, who was then United States Attorney for New Mexico, will be able to throw some interesting and peculiar light on this particular point.

The cause was remanded the second time March 3, 1902, and it was within the year following that Mr. Bartlett, as the Territory's Solicitor General, filed his intervenor, and his brief in support of his motion to intervene, praying that the Territory of New Mexico be allowed to join with us as co-defendant; and that, after holding such motion under advisement for several months, the trial judge, Frank W. Parker, overruled such motion, without, as Mr. Bartlett said at the time, good and sufficient reason.

Counsel for the Government had alleged that every acre foot of Rio Grande water used for irrigation above El Paso, that is to say in New Mexico and Colorado, tended to diminish the navigability of the stream below Rio Grande

City accordingly. The Government's case, as defined by the mandate of the Federal Supreme Court when the cause was remanded, depended entirely upon such counsel's ability to establish such allegation. Why, therefore, did Judge Parker overrule the Territory's motion to intervene? Possibly Judge Parker was afraid that if he did not overrule the Territory's motion, counsel for the Government would charge him with the crime of horse stealing, which, as all the world is supposed to believe, is a capital offense West of the Mississippi. So far as I know, the court never fixed a date for trial in response to the mandate of the Federal Supreme Court; nothing, in fact, was done until, some eighteen months after the cause was remanded in 1902, the Government filed its Supplemental bill, and asked the court to declare our franchise and charter rights, and our rights of way, forfeited, because we had not completed the whole of our irrigation works within the five years prescribed by law.

Mr. Root says "*As about seven [years] had elapsed since the dissolution of the injunction and no work had been done meanwhile, it was decided [decided by whom?] that the quickest way out of the matter would be through means of a supplemental bill with such averments.*" And, for cool, unqualified effrontery and pure shamelessness, certainly the above affectation that the injunction has not been in force during the past eight years, ever since the Government ordered its first appeal in 1897, can have no counterpart in the annals of diplomacy.

On May 24, 1897, the Government in a suit in equity applied for a permanent injunction to restrain the defendant company from constructing or maintaining a dam or dams across the Rio Grande in New Mexico. The trial court dismissed the application. The Government at once ordered an appeal to the Supreme Court of New Mexico, and in July, 1897, that tribunal sustained the decree of the lower court. The plaintiff then appealed to the Supreme Court of the United States. The appeal to the Federal Supreme Court was heard on November 10, 1898, and on May 22, 1899, Justice Brewer handed down the decision of the court, *reversed the decrees of the lower courts dissolving the injunction*, and remanded the cause for further inquiry as to the one question of fact at issue. On December 12, 1899, the cause again came up before the trial court, and on January 2, 1900, the trial judge again dismissed the Government's bill. The Attorney General again appealed to the Supreme Court of New Mexico, and in due course that tribunal again sustained the decree of the lower court. About three months later the Attorney General again ordered an appeal to the Supreme Court of the United States, and on March 3, 1902, the cause was again remanded to the trial court for further inquiry as to the said question of fact. Each time the Supreme Court of the United States remanded the cause for further inquiry as to said question of fact, the court, in specific terms, *reversed the decree of the lower courts dismissing the injunction*. The

Attorney General of the United States had alleged that the injunction was sought for the protection of navigation on the Rio Grande, and in Mr. Root's "Memorandum" it is asserted that the cause has never been tried on its merits, and that the litigation is still pending; but, such assertion notwithstanding, Mr. Root, in the same breath, so to speak, has the temerity to contend that when the Government's supplemental bill was filed, the injunction had not been in force for seven years. Official presumption, recklessness and brazen dishonesty could not go farther—it is impossible appositely to characterize such infamy. The English language is inadequate.

Mr. Root says the Government's supplemental bill *"was filed under the ordinary rules of the court,"* that *"no one appeared,"* and that *"the court took the supplemental bill as confessed and decreed forfeiture of the permit and an injunction permanent."*

The facts, however, as revealed by the court record, show that proper notice of the filing of the said supplemental bill was not given, and established precedent proves that the decree of forfeiture was irregular and beyond the power of the court. To elucidate: we had no opportunity whatever to oppose the filing of the Government's supplemental bill, and as the said motion was granted the same day it was filed with the court, and without my knowledge, or the knowledge of any of my friends, or of any of the local directors, or other local officers of the company, the de-

cree of forfeiture was obviously improper. I did not hear that such decree had been entered until several months later, when I made a friendly call upon Mr. Childers—then United States Attorney for New Mexico, on (I think) the 19th of October, 1903.

Upon the invitation of the Committee of the Irrigation Congress, I attended the Convention held at Albuquerque, New Mexico, in October, 1903, for the purpose of delivering an address on "Irrigation in the Rio Grande Valley;" and a day or two after I arrived at Albuquerque, I called upon Mr. Childers with a view to ascertain if it would be possible to get the Elephant Butte case up for trial while I was in the Territory. To my profound surprise, I then learned, from Mr. Childers, of the significant "hole in the corner" decree that had been entered against us. I at once went to see Mr. Rodey, who was at that time the Territory's Delegate to Congress, and told him of the contemptible trick that had been played upon us. Naturally, he was extremely indignant. With his assistance, I at once took steps to file the necessary affidavits and motion to have the decree vacated. The law firm of Klock & Owen was at that time professionally associated with Mr. Rodey, and, as the Attorneys of Record had so inexcusably failed in their duty, I employed Messrs. Klock & Owen to assist Mr. Rodey in preparing the required affidavits and motion, which were filed with the court in the course of a few days. The motion was argued before Judge Parker at Deming, New Mexico, on the 19th of December, 1903; when Mr.

Klock maintained that the court had erred in permitting the plaintiff, the Government, to supplement its original bill of complaint to the extent of practically substituting a new cause of action.

He pointed out that when Solicitor General Bartlett, in behalf of New Mexico, filed his motion with the same judge, praying that the Territory be permitted to join with us as co-defendant, the court took the matter under advisement for several months; that Solicitor General Bartlett was permitted to file a brief in support of his motion so to intervene, and that several months elapsed before Judge Parker handed down his decision, overruling such motion: but that when the Government filed its motion, so to supplement its bill of complaint, the Court *granted the motion the same day it was filed*, and that no officer of the company received notice of such motion, except one of the Attorneys of Record, who, according to the record of the Clerk of the Court, was served with a copy of the supplemental bill *after the motion had been granted*.

The said Attorney of Record must have known that such motion had been granted, but he did not so advise me, or any other officer of the company, or any of my friends, so far as I can ascertain. Mr. Rodey; our local Secretary; our local directors; and my other friends and associates in New Mexico; were all kept in total ignorance of the fact that the motion had been granted. The whole matter was kept secret.

Attorneys employed to represent parties litigant in

American courts, when they appear for their clients, become, *ipso jure*, "officers of the court," and are described as "Attorneys of Record." Their duties and obligations are clearly prescribed by the rules of the court, and they are not relieved of their obligations as Attorneys of Record, or as officers of the court, until they formally file with the court due and proper notice of their retirement from the case.

It is true that the said Attorneys of Record had not been fully paid for their services. The company formed in England to finance the Elephant Butte enterprise had been forced in liquidation by the Government's suit to enjoin the completion of the company's works; and as I had been ruined financially by the many sacrifices I had made in defense of our rights, and of the rights of the people of New Mexico, I felt that as the attorneys had been well paid for their services before the Government's suit was instituted, and partly paid for their work after the filing of the injunction, they, as citizens of New Mexico and therefore indirectly interested in the success of my costly defense of the territory's water rights, could well afford to wait for the balance due to them. I had had some correspondence with them relative to this, and they had not notified me of any intention on their part not to continue in charge of the case for us.

The fact that after the court had granted the Government's motion, so to supplement the original bill of complaint, a copy of the said supplemental bill was served upon

one of the Attorneys of Record is sufficient proof that the said Attorneys of Record had not asked the court to relieve them of their obligations as attorneys for the defendants.

I may mention also that one of the said Attorneys of Record, Mr. W. A. Hawkins, was a member of the New Mexico Legislature, and that in promoting the passage of a certain bill, introduced in the interest of a rival irrigation and land project in which Mr. Hawkins was said to be interested, he stated, on the floor of the Territorial Senate, in reply to questions asked by another member, that "Dr. Boyd had definitely abandoned the Elephant Butte enterprise," or words to that effect; which, of course, he knew was a deliberate falsehood, as only a few weeks before this I had written to him personally in regard to our company's affairs. This occurred prior to the filing of the Government's supplemental bill.

Whether the Attorneys of Record deliberately betrayed us or not, the fact remains that we were not given an opportunity to defend our vested rights and property, when the Government, by its supplemental bill, most improperly moved the court to declare the same to be forfeited as above.

The court was well aware that the allegations set up in the Government's original bill were wholly unfounded, and that it would be impossible for the Government to establish its case; that the allegations set up in the said supplemental bill were entirely opposed to and inconsistent with those set up in the original bill; that the filing of

such supplemental bill was a mere vulgar trick on the part of counsel for the Government to "jockey the English investors out of their rights;" that I was the accredited and responsible representative of the English company, one of the parties of the defense; that I had no intention of abandoning my defense of the vast interests at stake in the premises; that the official address and registered office of the defendant companies, the Parent Company—the Rio Grande Dam and Irrigation Company, and the English Company—the Rio Grande Irrigation and Land Company, Limited, was at Las Cruces, New Mexico, and that any notice sent to me in care of such registered address, or in care of Mr. Rodey, or of any one of our local directors, or of the Solicitor General of New Mexico, would reach me; that I was entitled to such notice by every rule of established precedent; and that common decency, fair play, justice, and the Territory's admitted debt to me, because of my long defense of our territorial water rights when the same were assailed in the courts and in Congress; one and all demanded that I should have an opportunity to oppose the Government's obviously irregular and improper motion. Why, therefore, was the filing of the Government's supplemental bill permitted to be done so covertly?

In the Government's original bill of complaint it was alleged that the Rio Grande is a navigable stream in New Mexico, and that therefore President Cleveland's Secretary of the Interior, Mr. Hoke Smith, had exceeded his power

when he approved and confirmed our charter rights and officially granted to us the right to impound the flood waters of the Rio Grande at Elephant Butte; but the Government abandoned the allegations set up in its original bill, and sought by a supplemental bill to substitute a new cause of action entirely. The Government had made no attempt to profit by the grace granted by the Supreme Court of the United States in remanding the cause a second time; had made no attempt to adduce further evidence in support of the allegation set up in its original bill that our proposed appropriation of the flood waters of the Rio Grande at Elephant Butte would substantially diminish the navigable capacity of the stream within the present limits of navigability; but had, in fact, by covert means, opposed our attempts to get the question of fact, as defined by the mandate of the Federal Supreme Court, finally determined by trial. The supplemental bill could not have been filed in good faith. It was a mere vulgar subterfuge, and it was manifestly irregular, inconsistent and improper. Exhaustive search shows that there is no precedent for the filing of such a bill. The motion was unauthorized by law, or by established usage, inasmuch as the allegations made in the said supplemental bill were wholly inconsistent with the allegations of the original bill.

If the allegations of the Government's original bill had been sustained by the evidence, and by the decisions of the courts, we would have been defeated independent of the inconsistent allegations in the supplemental bill; and

as the cause of action alleged in the supplemental bill was in no sense supplemental to, or in aid of the cause of action alleged in the original bill, the former was clearly irreconcilable and inadmissible.

No system of jurisprudence will permit a party to assail and restrain the prosecution of a right, and then, in the same action, permit the same party successfully to allege a forfeiture of such right because such right had not been exercised within the period authorized by law.

The Government first assailed and restrained by injunction the completion of our enterprise, and then, in the same action, sought to have our rights forfeited, because we had not exercised such rights, rights that the Government had denied and enjoined, within the time prescribed by law.

The object of the action as set forth in the original bill was clear. It was to restrain the defendant company from completing its works, and such restraint was sought on the alleged ground that the said works were unauthorized and illegal. The fact that the Government prayed for an injunction is conclusive as to this; for an injunction could not be granted to restrain a legal and authorized act. Clearly the purpose of an injunction is to restrain a party from doing an illegal act; but the Government by its supplemental bill in effect admits that our proposed works were legal and authorized, and, after tacitly making such admission, attempts to set up an entirely new cause of action.

A court of equity cannot allow the plaintiff to reconstruct its case by the introduction of an entirely new cause of action. All the decisions of the courts show clearly that new facts alleged in a supplemental bill must support and strengthen and be germane to the allegations of the original bill. A supplemental bill never does away with an original bill. Invariably a supplemental bill is incorporated with and becomes a part of the original bill; an original bill and a supplemental bill must be consistent, and reconcilable one with the other and they are read together and are considered as one pleading.

The courts have clearly defined that a supplemental bill, which is merely an addition to the original bill, must be consistent in its allegations, the former must be supplemental in its nature and not independent or subsequent, the new matter must not change the rights or interests of the parties. To quote a specific ruling: -

“To permit a new cause of action, arising after the institution of the original suit, to be prosecuted by a supplemental bill would be to violate the obvious principle that in every case the cause of action must exist at the time the suit is brought. A supplemental bill which has no possible connection with the original bill is inadmissible. The plaintiff cannot file a supplemental bill to introduce new facts which have occurred since the filing of the original bill.”

Further, the record is bare of any proper notice of application for leave to file the said supplementary bill.

We had no notice of the Government's application for leave to file the said supplemental bill until after it was filed and granted; and we were denied proper notice by the irregular acts of the plaintiff and of the court. We were not permitted to be heard upon the merits of the application, notwithstanding long established precedent, and that the courts have specifically declared that:

“When a defendant is entitled to service, under the rule allowing plea and answer,, a decree *pro confesso* without such service will be set aside. Mere orders *pro confesso* which are entered without proper notice to a party entitled thereto are opened as a matter of course upon a showing of meritorious defense. A defective service of process will vitiate the subsequent proceedings.”

The gravamen of the Government's motion lay in the paragraph that reads as follows:

“That the plaintiffs pray to be permitted to file a supplemental bill of complaint * * * [alleging that we had not completed our irrigation works within the five years prescribed by law] *and that the defendants be decreed to have forfeited all the rights they may have had or claimed under and by virtue of said Act of March 3, 1891.*”

According to an affidavit of the clerk of the court the Government's motion, for leave to file such supplemental bill, was filed and granted on April 7, 1903. On May 21, 1903, the court handed down its decree of for-

feiture in which it found that:

“The articles of incorporation and the map and survey of the reservoirs of the defendant corporations * * * were filed with the Secretary of the Interior prior to the 26th day of June, A. D. 1897, [when the temporary injunction was dismissed by the trial court—against which decree of dismissal the Government appealed], and were prior to said date approved by the Secretary of the Interior, and * * that the said defendants have not completed its said reservoirs * * * within five years after the approval of the same by the Secretary of the Interior, * * * WHEREFORE IT IS ORDERED, ADJUDGED AND DECREED that the rights of the said defendants, or either of them, to construct and complete the said reservoirs and ditches, or any part thereof, under and by virtue of the Act of Congress of March 3, 1891, be and the same are hereby declared to be forfeited.”

When my motion to have the above decree of forfeiture set aside was argued before Judge Parker at Deming, Mr. Childers, then United States Attorney for New Mexico, as attorney for the Government, contended that as the trial court had dismissed the injunction, we had not legally been restrained thereafter, notwithstanding that the Government appealed against such dismissal and that the Federal Supreme Court, in remanding the cause, as above, had twice, in specific terms, reversed the decrees

of the territorial court. Mr Childers admitted that, in effect, we were restrained inasmuch as it was theoretically conceivable that the trial court (under the mandate of the Supreme Court directing that the decree of dismissal be set aside and that further evidence be taken as to the said question of fact) might, possibly, decide that the storing of the whole of the flood waters of the Rio Grande at Elephant Butte would "substantially diminish" the navigable capacity of the river, and that the court might, possibly, enter an order restraining us from appropriating more than a relatively infinitesimal part of the flow of the stream. He said that such a result was theoretically conceivable, but that, having regard to the known facts, the possibility of such a contingency was too highly remote to have any practical bearing on the case. Therefore, he maintained we had not been restrained, and that as we had not completed our works within the five years prescribed by law, we had forfeited our charter rights and our rights of way, reservoir rights, and other privileges.

Mr. Childers admitted that a great wrong had been done, and he referred in glowing terms to New Mexico's great debt to me because of my defense of the Territory's rights in the premises when such rights had been assailed in Congress by the supporters of the "International" dam scheme; but, nevertheless, he contended that the court had no power to consider other than what he said was the strict, legal aspect of the case.

Judge Parker's dismissal of my motion to have the

decree of forfeiture set aside left the whole question to be decided by the Supreme Court of the United States. For if the Supreme Court of the Territory reversed his ruling, the Government would, of course, appeal; while if such ruling were sustained, and looking to the fact that the Government is both Judge and litigant it was to be expected that it would be sustained, then in that event I would order an appeal.

Judge Parker did not hand down a written opinion dealing with the merits of my motion. He merely handed down an order, which, after the recitals, read as follows:

“The court having heard counsel for the plaintiff and defendants, and being fully advised in the premises, doth find that the motion for leave to file said supplemental bill was served upon the attorney of record of said defendant; that there was no irregularity in the filing of said supplemental bill of complaint; that it hath no power to set aside the decree entered upon the said bill at this time upon such application, and doth overrule said motion.”

Seemingly Judge Parker based his conclusion upon the fact that one of the attorneys of record had received notice of the motion for leave to file such supplemental bill, but he either overlooked or ignored the more important fact that the records show that such notice, which was merely in the form of a copy of the supplemental bill, was served after the order had been entered. The fact that the attorneys of record took no steps to protect

our interests was also overlooked or ignored. Our motion was not overruled by the court exercising its discretion on the merits of our application for leave to oppose the filing of the said supplemental bill; and I am assured by one of the foremost jurists in this country that

“There is no precedent for the filing of a supplemental bill of the kind that was filed in this case. If such practice were sustained by the appellant courts, it would be opposed to all precedent now existing. Appellant courts will not overrule all previous precedents against such practice by permitting the filing of such a bill.”

As the reports of the Geological Department show conclusively that New Mexico's Rio Grande flood waters do not contribute substantially to the navigable capacity of the river below; and as the Government has had to abandon its contention in this respect; and as it cannot honestly be maintained that the mandate of the Federal Supreme Court, in ordering that the decree of dismissal be set aside, did not reverse the decree of dismissal of the trial court, it would seem to be as certain as anything in this world can be certain, that our rights must, inevitably, be sustained by the ultimate findings of the Supreme Court of the United States—unless that tribunal has become as corrupt and as amenable to official pressure as has the Department of Justice since President Cleveland went out of office, which I cannot bring myself to believe. Twice already our cause has been carried to the Federal

Supreme Court, and therefore we are entitled to be advanced on the docket and to a hearing at Washington early in October next.

Attorneys General Griggs and Knox alleged that the Elephant Butte suit had been instituted and maintained solely for the protection of commerce, and as the suit is still pending, and as Secretary Root says it has not, as yet, been tried on its merits, it is inferable that the British Foreign Office is expected to be satisfied with the intimation that it is still "being maintained for the protection of commerce—" notwithstanding the suppressed report of the Government engineers that were sent out to gauge the Rio Grande floods as they pass down stream from above El Paso, Texas. Was the said supplemental bill also filed for the protection of commerce?

Secretary Root says the Government's supplemental bill was filed as the "quickest way out." The quickest way to preserve the navigability of the Rio Grande? Or the quickest way to destroy our rights, confiscate our property, and ruin our enterprise, so as to enable the General Government to give *free water*, at the expense of the people of New Mexico, to the "International" dam schemers' land in Mexico?

If the Government of the United States, as represented by the Department of State and the Department of Justice, was honest in its contention that the suit was being maintained solely for the protection of commerce, why were the findings of the trial court and the Supreme Court of

New Mexico not accepted as final when the Government's own engineers reported that less than one per cent. of the waters of the Rio Grande from above El Paso ever reaches the so called head of navigation? Why was such official report suppressed? Why was the said supplemental bill filed "as the quickest way out?"

The answer is plain. The suit had *not* been maintained for the protection of commerce, and the officials responsible for its maintenance were *not* endeavoring to establish the truth; on the contrary, they were designedly seeking to destroy our enterprise.

The passage of the International Irrigation Act, as the Reclamation Act is sometimes called, was not in any way responsible for the suit to enjoin the construction of our works. The Elephant Butte suit was instituted in May, 1897, and the Act of Congress providing for the reclamation of public lands in the arid states and territories was not passed until 1902. Further, the Act was not passed with the object of discouraging or of destroying private or corporate irrigation undertakings; it was passed for the reclamation of arid sections of the national domain, where without water for irrigation the land is unfit for location under the Homestead Act.

The supplemental bill was not filed because of Mexico's alleged treaty rights, or because of the inspired Mexican claims for alleged damage to the farming interests on the Mexican side of the Rio Grande in the El Paso valley. For, prior to the filing of the Government's ori-

ginal bill, Attorney General Harmon had declared that the alleged Mexican rights and the said inspired bogus claims found no warrant in law or in equity.

In proof of the fact that the General Government knew the Mexican claims were bogus, I may mention that in the treaty with Mexico, recently signed by Secretary Root, it is especially declared that Mexico is not, by virtue of any inherent right, or otherwise, entitled to any of the waters of the Rio Grande flowing from American soil.

In the said treaty, signed by Secretary Root in behalf of the United States in May last, and subsequently ratified by the Senate, wherein the United States undertakes to build the Elephant Butte dam and reservoir and therefrom to deliver to Mexico 60,000 acre feet of water annually, it is expressly stipulated that:

“The delivery of water as herein provided is not to be construed as a recognition by the United States of any claim on the part of Mexico to the said waters
** * * The United States in entering into this treaty does not thereby concede, expressly or by implication, any legal basis for any claims heretofore asserted, or which may be hereafter asserted by reason of any losses incurred by owners of land in Mexico, due or alleged to be due by the diversion of waters of the Rio Grande within the United States, or in any way concede the establishment of any general principle or precedent by the concluding of this treaty.”*

Thus we find the great principle that I have so long defended in the courts and before the Congressional Committees fully recognized and confirmed by our General Government.

The treaty was signed by Mr. Root on the 21st of May last, and judging by the stipulation above quoted, it would seem that after he signed his "Memorandum," *in re* the British petition, he must have learned something about the origin of the said Mexican claims.

Some months ago I heard that as General Anson Mills and his associate land speculators had failed (owing to my opposition to their "International" dam scheme) to secure by Act of Congress a prior water right and free water for all of the irrigable lands on the Mexican side of the El Paso valley, they were urging the consummation of a treaty that would give to Mexico (to them) a prior water right and free water for 40,000 acres, such water to be supplied from the Elephant Butte reservoir about to be built by the United States Reclamation Service as a national project, and that Mills and his friends were exploiting the (inspired) Mexican claims in furthering their object. When I heard of this, I wrote to Senator Teller, of Colorado, explaining the real quality of their purpose, and he promised to defeat in the Senate any treaty that recognized Mexico's alleged pretensions or bogus claims. Therefore, it may be that when Secretary Root signed the said treaty it contained no such stipulations as above quoted, and that they were subsequently

inserted at Senator Teller's instance by the Senate. At any rate, as the Associated Press has not, so far as I know, announced that General Anson Mills has been dismissed from office, or that he is to be prosecuted criminally for perjury, or under the authority of the ruling of the Federal Supreme Court in the case of *Clune vs. United States*, "for conspiracy to commit a crime against the United States," it is but just for us to take for granted that Secretary Root is still in ignorance of the origin and true nature of the "*claims for damages filed in the United States Department by Mexican citizens*," referred to in his "Memorandum;" and that, misled by the misrepresentations of the advocates of the free water to Mexico proposition, he signed the said treaty in its original form in good faith and under the impression that he was acting justly—just to Mexico and without injustice to our own people. Or, perhaps, like certain of our great "Captains of Industry," General Anson Mills enjoys "immunity" and is above the law.

The value of irrigated lands has been so widely advertised during recent years that it is, indeed, surprising that the Senate Committee on Foreign Relations did not examine more closely into the alleged reasons for making such a gracious concession to Mexico. According to the decisions of the Federal Supreme Court in the *Elephant Butte* case, and to the terms of the said treaty, Mexico has no right to claim any part of the waters of the Rio Grande flowing entirely from United States soil. On the

other hand, as the Rio Grande is not navigable in New Mexico, and as the flow of the stream from above El Paso does not contribute to navigable waters below, the Civil Law Rule, which obtains throughout the arid West, a rule that has long been recognized and ratified by Congress, justly entitles the people of the Territory to impound and use for the cultivation of their lands the whole of the waters of their Rio Grande catchment area. Owing to the aridity of the climate, agriculture in New Mexico is restricted almost entirely to irrigable lands, and, as the rivers of the territory are largely torrential, the irrigable area is very limited; so much so in fact that out of the whole of New Mexico 122,580 square miles, an area equal to that of the states of Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, and New Jersey combined, and exceeding that of Great Britain and Ireland, it is doubtful if more than about 3,000,000 acres of it will ever be irrigable.

New Mexico, owing to her vast extent of territory and to her extensive and widely diversified mineral resources, is unquestionably destined to have a large population in the near future; but the bulk of her food supplies must ever, for the reason given, be imported from neighboring states. The amount of Rio Grande valley land, as fertile as any land on earth, irrigable in New Mexico, is, practically, limited only by the amount of water available for irrigation; and every acre foot of the 60,000 acre feet of water to be taken from the territory's Rio Grande catch-

ment area and given to Mexico could be used most profitably in increasing the irrigable area above El Paso, between New Mexico's southern boundary and the Elephant Butte reservoir.

Under scientific methods of intensified farming by irrigation, 60,000 acre feet of water annually, may be made to suffice for the adequate irrigation of 40,000 acres in this valley; and as the experiments of the Government experts in charge of the local United States Agricultural College show, and as the experience of many local farmers proves, the Rio Grande valley lands are so extremely productive that, with sufficient water for proper irrigation, they can be made to yield a net profit of from \$50.00 to \$300.00, and even \$500.00 per acre per annum. The actual cash value, therefore, of the 60,000 acre feet of water per annum. granted, *free of charge*, to Mexico, can readily be estimated.

By engaging to give annually to Mexico 60,000 acre feet of the waters of the Rio Grande flowing from the soil of New Mexico, the General Government has cut down the area of irrigable lands in the territory by quite 40,000 acres, if not more, and thereby has robbed succeeding generations of New Mexicans of certainly not less than \$2,000,000.00 a year. Verily, a long price to pay for the privilege of helping the promoters of the "International" dam scheme to profit by their speculation in Mexican lands.

If New Mexico had been admitted into the Union as

a sovereign state, as promised by Mr. Root's party in its platform in 1900, such an outrage as is that perpetrated by the terms of the said treaty would have been impossible.

It is to be hoped that Congress will make a special appropriation from the Federal Treasury to cover the cost of storing at Elephant Butte and of delivering to Mexico the 60,000 acre feet of water that the Executive Branch of our Government in its supernal wisdom has so generously bestowed upon the owners of alien lands. For in national affairs, as in private life, it is well that charity should begin at home; and although the terms of the said treaty provide that "the United States shall pay the whole cost of storing the said quantity of water," no provision has been made, so far as I can ascertain, for relieving the American farmers of any part of the cost of carrying out the Elephant Butte project.

The contract between the American farmers and the United States Government provides that the \$7,200,000.00 to be expended on the said project shall be repaid by the said American farmers to the United States Reclamation Fund within ten years after the completion of the Elephant Butte dam; and as security for such repayment *they have had to assign their title to their lands.*

Under the terms of the said treaty, the promoters of the "International" dam scheme will get *free water* for their Mexican lands; but the American farmers in New Mexico and in Texas, under their contracts with the Gen-

eral Government, will have to pay \$40.00 per acre for their water right. Talk about your prescient statesmanship and "square deal" for all!

Secretary Root, as an excuse for not at once complying with the request of the British Government that the rights of the British investors in the Elephant Butte enterprise be referred to the Hague Tribunal for adjudication, said:

"The United States Department is constrained to deny that the suit in question [the Elephant Butte suit] has ever been tried on its merits, and holds that it is still pending in the Federal Courts."

Evidently Mr. Root presumes to contend that as the question of fact at issue, as defined by the Supreme Court of the United States, has yet to be determined by final trial, there is no sufficient reason why the matter should be referred to the Hague. But what about the action of the United States Government in undertaking to build our Elephant Butte dam, and our other proposed dams and irrigation works? Our main storage dam was to be built across the Rio Grande at a point in a cañon near a high bluff on the East bank of the river, known as the Elephant Butte. The Government has undertaken and is proceeding to build a similar dam a few yards below our site. The Government's storage dam and reservoir, as above, is *officially* described as "the Engle project." Engle is a small cattle-shipping station on the Santa Fé Railroad, about fourteen miles East of Elephant

Butte.

There is a popular fallacy that the ostrich hides its head in the sand and imagines that its whole body is out of sight of its pursuers: and the Government in referring to the dam it is preparing to build in the cañon at Elephant Butte, and practically on our dam site, as the "Engle dam," suggests that the supposed illusion of the ostrich has its counterpart in official circles at Washington. Such official attempt to change the name of the Elephant Butte project would be amusing if it were not indicative of the dishonorable purpose of the parties responsible.

Taking it all in all, there is no blacker page in the annals of official corruption than is the one that records the esoteric history of the Elephant Butte suit *cum* International (El Paso) dam scandal.

What a mighty to-do there would have been if the Government of Venezuela, or of the United States of Columbia, or of any one of the "Latin Republics," had in a like manner prostituted its Department of State, Department of Justice, and National Judiciary, in the interest of official graft, and with the object of destroying a legitimate domestic enterprise, that had been officially sanctioned by a previous local administration, and that had been financed by American investors. How our Federal officials at Washington would have blustered, and threatened, and fulminated about upholding the sacred rights of confiding American citizens that in good faith

had invested in such enterprise. How strenuously "the Big Stick" would have been flourished, and how nobly our American statesmen would have "spouted" about the righteousness of the American cause, and about the imperative demands of Justice.

A short time ago, when the courts of Venezuela gave a decision that was said by interested parties to be unjust to certain American interests, our General Government threatened to send United States war-ships to the port of Caracas to uphold the rights of the "American investors."

If my memory is not at fault, Secretary Hay took a very firm stand in regard to the alleged unjust actions of the government of Venezuela, and our Government threatened to make, or did make, a "naval demonstration" because of such alleged injustice to American interests.

For many years, at any rate since 1896, prominent representatives of our Federal Government have gone very much out of their way to pose before the world as Heaven-sent apostles of national honor and of international comity, and at one time or another they have admonished most of the nations of the earth and the rulers thereof. President Roosevelt in particular, and his sincerity I do not question, has had much to say about civic righteousness, public honor, the square deal, and the necessity for punishing official corruption, etc., etc., etc. He has extolled "*the courage which refuses to abandon one's own rights;*" and, among his many praiseworthy utter-

ances and dictums, he has declared that "*The toleration of the wrong, not the exposure of the wrong, is the real offense.*" But, as Gladstone so truly said, "*Indignation is froth except as it leads to action. Mere remonstrance is mockery.*"

As far as my own private rights have been concerned in the Rio Grande matter, I may as well confess that I would have abandoned them several years ago—when I found that it was useless to expect Secretary Hay or Attorney General Griggs to act justly, if I had not felt that it was my plain duty to defeat, if possible, General Anson Mills' infamous plot to "jockey the English investors out of their rights," and to "rob the people of New Mexico of their most precious heritage." As no one else appeared to be disposed to incur the displeasure and enmity of the Departmental officials by openly opposing the powerful Administrative forces that were supporting General Anson Mills' scheme; and as the maintenance of the vast territorial and other interests that were so seriously threatened, and of the great general principle that was involved in the issue, was manifestly of signal importance to many thousands of my countrymen, present and future, I was bound by every instinct of justice and patriotism to do all in my power, no matter how great the sacrifice required of me, to expose and defeat the treasonable purpose back of the attacks in the courts and in Congress upon our Elephant Butte enterprise.

The genesis of the Elephant Butte matter would have

been forced to public notice long ere this if I had not been urged to wait, to trust to the ultimate result of the proceedings in the courts, and not to publish any matter that might, possibly, by antagonizing Republican Senators and others friendly to Mr. Hay, jeopardize the Territory's struggle for admission as a sovereign state; and now that the statehood bill has been passed by Congress I shall at once place all the facts of our case before the editors of the leading papers of the country, publish a complete history of the "official crime" that has ruined our great irrigation enterprise, have my friends in Congress insist upon an official investigation of the charges preferred (by the leading citizens of New Mexico) against General Anson Mills, and, one way or another, bring the matter before President Roosevelt in a manner that cannot fail to insure its receiving his personal consideration. Publicity, in respect to General Anson Mills' official misdeeds and treasonable conduct will, I am sure make for justice, as it has in regard to the insurance frauds and the meat packers' filthy offenses against the laws of God and man.

The proof that a grave official crime has been committed, by the officials responsible for the inception and maintenance of the Elephant Butte suit, is so complete and incontestible that President Roosevelt cannot, if he would, refuse to punish the guilty parties, and to be just in the matter, without openly repudiating his square deal principles and his avowed doctrine that:—

“A dull public conscience, and an easy-going ac-

quiescence in corruption infallibly means the ruin of free institutions. * * * There can be no greater offense against the nation than a breach of trust on the part of a public official or the dishonest management of his office, and, of course, every effort must be exerted to bring such offenders to punishment by the utmost rigors of the law."

Our company's enterprise has been destroyed, our property has been confiscated, and our admittedly valuable vested rights have been made worthless by the dishonest acts of representatives of the United States' General Government; and as it has been clearly shown that we cannot expect justice through the medium of the United States Courts, owing to the power and disposition of the Federal authorities to keep the Elephant Butte case "pending" indefinitely by improper appeals and other overt acts, the British Government certainly has valid grounds for insisting that our rights be referred to the Hague Tribunal for adjudication without further delay.

We are not asking the United States Government to compromise. Any attempt at direct negotiation with the Government of the United States with a view to a satisfactory compromise would be worse than useless. Such negotiations would only lead to further delay. On one pretext or another, the Federal authorities would defer a final settlement and keep the matter tied up with official red tape for years.

So, likewise, it would be equally useless for us to sue

for damages in the United States Court of Private Claims; for there, also, we would be worn out by official trickery and by the law's delay.

We are not making an unreasonable demand when we insist that our rights be referred to the Hague, an impartial tribunal beyond General Anson Mills' influence. An English Company, formed to finance a legally authorized and otherwise legitimate American enterprise, has been forced into liquidation by the gross dishonesty and irregular acts of certain Government officials, acting as representatives of the United States, and the British Government, acting in behalf of the holders of the Debenture-bonds that had been issued by the said English company, very properly, having regard to all the well known facts of the case, demands that the rights of such bondholders shall promptly be referred to the Hague Tribunal for adjudication.

The petition of said bondholders was presented nearly three years ago, and since its presentation the Government of the United States, despite the "pending litigation," to which Mr. Root in his "Memorandum" so pertinently refers, has steadily and openly proceeded with its plans for building the Elephant Butte dam, and without due process of law has confiscated and taken possession of the property upon which the Debenture-bonds of the English company were secured.

If Mr. Root is of the opinion that the United States has a proper defense, he cannot honestly object to such

proposed impartial adjudication upon the merits. If, on the contrary, Mr. Root knows that our cause is just and that our reasons for insisting that it be referred to the Hague are well founded, then, in view of the nature of the Government's acts in so confiscating our property, his object in wishing to prevent, if possible, such proposed adjudication at the Hague is not hard to fathom, and it is to be expected that he will endeavor to convince His Majesty's Government that the rights of the said bondholders are not of a character to be referable to an international court of arbitration. However, as I have repeatedly observed, I do not suppose that Mr. Root personally knows much, if anything, about the matter.

There is another reason for pressing for prompt consideration of our case. The Government officials know that I have been ruined financially by the many sacrifices I have made in protecting our interests and in defense of New Mexico's water rights, that I have had to charge heavily my wife's small private income under settlement, and that I am now reduced to absolute poverty in consequence of the monetary obligations I have had to assume in the premises—especially when at Washington opposing the passage of the various "International" dam bills above mentioned; and they doubtless know that I cannot, without depriving my wife and children of the veriest necessities, continue much longer, single-handed and alone, to defend our rights against the whole force of the United States Government. And, knowing how I am circum-

stanced, they are counting upon further delays and cost to force me to abandon the struggle. They hope that by such means their treasonable conduct may escape exposure.

My life, even, has been threatened. Soon after I circulated throughout the Territory the last of the said petitions, that were signed by our leading citizens, and that prayed the President to order an inquiry into the charges preferred against Anson Mills, I received three anonymous letters, threatening me, in general terms, with "a bullet in the back" if I did not "leave the country and give up my fight against the prior rights of the Mexican farmers." These anonymous letters were so worded as to imply that they were from Mexican farmers, but as they were typewritten, and as they reached me soon after I had suggested to various parties that similar petitions be circulated in El Paso for signature, I have not much doubt as to the source of such threats. Furthermore, a Government Secret Service agent was (so I have been told) sent out here to watch my movements; and my foreign (English) mail has more or less regularly been held up and opened, and frequently held back altogether.

As a matter of fact, I was told at Washington that I "could not hope to win out in a fight against the United States Government, no matter how righteous my cause might be." But we shall see as to this. Personally, I have not lost faith in my countrymen's love of justice and fair play, and I am convinced that by *publicity*, and by the intervention of the British Foreign Office, we can

“win out,” even in a fight against the United States Government, or what at the present time stands for such Government. If President Roosevelt is the upright, fearless man I take him to be, General Anson Mills, Marsden C. Burch, Ex-Attorneys General Griggs and Knox, will yet be held to strict account for their treasonable abuse of their official positions.

I yield the palm to no man in respect for the law, or for the high office of an Attorney General of the United States, but I have the utmost contempt for any man who betrays the trust and honor of his office and the confidence of those responsible for his appointment. And, at any price, no matter how fatal such cost may be to me or to my family, I shall, if God spares my life, carry this Rio Grande matter to a just end. Somehow, I shall find a way to force it into publicity, and thereby, through the will and power of honest men, bring about the condemnation of the guilty officials in question.

The gross, brazen dishonesty of the official support given to the promoters of the plot to trick the United States Government into supplying free water to “Mexico,” is an offense to every decent minded American citizen. To quote the words of Cicero in respect to Caesar, “*I am sick to think of it.*”

There are no words strong enough for the condemnation of public officials who, like General Anson Mills, Marsden C. Burch, Secretary Hay, and Attorneys General Griggs and Knox, by their dishonesty in office, besmirch

their country's good name, defile our Federal Departments, and discredit our national courts.

When Colonel Engledue, R. E., (who, by the way, lost heavily by the ruin of the Elephant Butte enterprise, and recently died by his own hand) first suggested that the British Government should be asked to intervene in behalf of the English company, I opposed the idea. I then believed that Secretary Hay and the Attorney General had been misled by Anson Mills, and that consideration of the (first) petitions of the people of New Mexico would lead to an investigation and thereby to a speedy and just settlement. Naturally, as an American, I was averse to having such a disgraceful exhibition of American official dishonesty revealed in all its nakedness to the British Government. Besides, at that stage of the proceedings in the courts, such proposed intervention could not have served any useful purpose, and I feared that it might do great harm to other American irrigation companies whose agents were then seeking working capital in Europe. I was then daily expecting that the report promised by Secretary Hay (which, if ever called for and made, was never communicated to me, as promised) would lead to General Anson Mills' dismissal from office, and that the suit to enjoin us would be abandoned; but, in the light of subsequent events, I can now see that Governor Thomas, of Colorado, was right when he said that Anson Mills would be protected by the Department at all cost, and that my confidence in the honesty of the Government's purpose

was entirely misplaced.

Now, of course, when all the world knows of the commercial, financial, and political corruption that latterly has made the very name of this country a reproach and by-word in the mouths of men, and that PUBLICITY has been found to be the best means of bringing about a better state of things, it is most desirable, for several reasons, that the official corruption responsible for the Elephant Butte suit *cum* International (El Paso) dam scandal, should fully be exposed, both in this country and in England. It is by such publicity only that just compensation for the investors in the Elephant Butte enterprise, and just punishment of the guilty Government officials can be assured.

And, my dear Lord Winterstoke, if you will consider the matter broadly, you will, I think, recognize that you are, in a way, personally interested in the punishment of these guilty American officials, as well as in the matter of compensation for the loss of your money in the Elephant Butte undertaking. For, inasmuch as the welfare of your country is, in a large degree, identified with the welfare of the people of the United States, anything that threatens the stability of our national institutions is, therefore, inimical to the best interests of the British Empire.

Looking to the portentous menace of the future, to the growing discontent and political power of the uneducated and impoverished masses, and to the rapid increase among them of a morbid belief in collectivism and in

anarchism, is it not a fact that the supremacy of the English speaking race, and therewith the ethical and economic betterment of the whole world, is in a great measure dependent upon the moral progress and true prosperity of the people of this country, as well as upon the integrity of the British Empire?

In America we are in the throes of a most momentous moral and industrial revolution. One that, unless it overthrows the appalling power and lawlessness of entrenched capital, that for years ~~has~~^{have} debauched our political system and prostituted our judiciary, must sooner or later lead to worse evils and to a bloodier outcome than befell in France in the days of Robespierre.

Driven by cruel oppressions, organized labor is preparing to resist with armed force the unholy alliance, between concentrated predatory wealth and unscrupulous political power, that now defies the laws of the land and robs the wage earners with reckless impunity. With no faith in the unctious platitudes and tawdry rhetoric of the political representatives of the "trust" and of other special interests that claim to be subject to "higher laws" than are those on the statute-books, and that have been enacted for the protection of the rights of the common people, many otherwise conservative citizens are turning to the pernicious doctrines of extreme socialism in the hope of finding a way to safeguard the rights of the poor and of the rich alike.

As for myself, I am glad to be able to say that I still have an abiding faith in the good sense and rectitude of

my countrymen. I am looking forward hopefully to the outcome of the moral revolt that is now so widely evidenced by the strictures of the press, and by the general crusade that a large number of our best and most prominent men in both public and private life are loyally engaged in promoting in the interest of the common good. A vast majority of the American people are honest sincere Christians, and there is, I believe, a spiritual awakening throughout the land that I trust will in the end purify the ballot and drive from power the politicians that have failed to prevent their financial backers from systematically robbing the people, as they have failed to prevent a wholesale pollution of our food supplies.

Roosevelt's
policy.

Unhappily, this political and ethical regeneration, this moral renaissance, cannot come without great travail. The money trust and its affiliated special interests will not surrender their hold upon our national and state legislatures without a struggle; and, consequently, it behooves every honest citizen, every friend to good Government, every man who would serve his country and promote the well-being of the race, to be up and doing, to hammer away, to strike hard while the golden heart of the nation is hot with virtuous resolution, and in a state to be shaped to uplifting of man and to the glory of God.

You, too,
Lam.

To This end, My Lord, I urge that you, too, do what you may bring to public attention the official dishonesty responsible for the ruin of our company's undertaking, and that you use your influence to move His Majesty's

Government to insist on the prompt arbitration of our cause at the Hague.

Apart from any other reason why you should exert your influence as requested, I may, perhaps without impropriety, remind you that I, myself, have some claim upon your good offices. For, as you know, when your old and honored friend, the late Mr. Mark Whitwill—sometime chairman of Lloyd's Shipping Committee—was so unexpectedly found to be in financial difficulties, and when my co-Directors, all countrymen of his, were determined to post him at the Bank of England and at Lloyd's as a delinquent underwriter, I, and I only, proposed and insisted that the time for payment under his underwriting contract be extended.

I was not well acquainted with Mr. Whitwill, although I knew that his name stood high in the shipping-world, and that for almost half a century he had ranked among the first of England's philanthropists. All this I had learned when, at Lord Winchilsea's request, Mr. Frank Crisp, his Lordship's Solicitor, scrutinized and passed upon Mr. Whitwell's underwriting contract. So soon as my co-directors consented to extend Mr. Whitwell's time for payment, he called upon me and fully explained his financial position, and, incidentally, told me much of his life. I went with him to Bristol, visited his Orphanage, and other charitable institutions, and saw something of his home relations and of the large affection in which he was held by those who knew him well; with the result that I

determined to save him if I could. Immediately upon our return to London, I went to see the company's bankers and plead with them in Mr. Whitwell's behalf so earnestly that they finally consented to advance to the company the moneys payable under his underwriting contract—in all nearly £20,000; such advance to be secured by his notes *and by my personal guarantee*. Furthermore, I transferred to Mr. Whitwell a large block (I think it was 10,000 £1 shares) of my own stock in the company; the same to be used by him in raising money, among his friends, with which to meet the notes at their maturity.

All of this is a matter of record. Only the other day I had before me a copy of the guarantee I executed when I pledged to the bank my private securities, and *personally guaranteed* the advance so made to the company.

As you know, Mr. Whitwell ultimately, and in the main through your generosity, succeeded in clearing himself; but nonetheless, it was I who saved him in the first place.

Moreover, when, by reason of the prolonged litigation with the United States Government, the company was forced into liquidation, I borrowed the money to pay off its further indebtedness to the bank, abandoned my other interests, and went to Washington, at my own expense, to oppose the passage of the first of the "International" dam bills then pending in Congress; *and during the past six years I have repeatedly offered to waive and to forfeit absolutely the whole of my personal interests in our Com-*

pany's undertaking if the United States Government would repay the English investors and others who had joined with me in financing the Elephant Butte enterprise, and build the Elephant Butte dam without conceding a prior water right to Mexico.

I am very reluctant, indeed, to remind you of what I did to save your old friend, Mr. Whitwell, from ruin; but the great value of your hearty co-operation in respect to the British petition will, I hope, justify my so doing.

Chetham-Strode has been called into consultation at the Foreign Office, and I am advised that His Majesty's Government is now disposed to press our matter with vigor. If this is done, and prompt adjudication at the Hague is insisted upon, a satisfactory award in our favor is certain. My only fear is that the niceties of international diplomacy may cause Sir Edward Gray to defer to the request of the United States Government for delay. It is to obviate any such concession to the wishes of the authorities at Washington that I so strongly urge your assistance. If necessary to force our rights to prompt consideration, the aid of the English press should be enlisted at once, and, as suggested by one of the very much disgusted English bondholders, "the whole dirty business should be raised in Parliament."

By publicity I am confident that we can force the United States Government to a just settlement; for I do not think that any one can question President Roosevelt's honesty when he says:—

“More and more we must strive to bring about the day when the successful rascal will be hounded down as the unsuccessful rascal is. No crime calls for sterner reprobation than the crime of the corruptionist in public life. Self government becomes a farce if the representatives of the people corrupt others or are themselves corrupted.”

Washington said, “Let us as a nation be just. Let us fulfil our public contracts with the same good faith we suppose ourselves bound to perform our private engagements,” and the irregular maintenance of the Elephant Butte suit notwithstanding, I cannot but believe that the spirit of national honesty proclaimed by the “Father of his Country” still governs the conduct of our Chief Executives at the White House.

In dictating this lengthy and wearisome statement of our case as it now stands, I have necessarily had to recapitulate more than a little in order to make thoroughly clear the various points considered. In thus entering into so many of the details, I have been actuated largely by a desire to place in your hands in one paper, and in more or less consecutive order, most of the essential facts; so that if, by any chance, the threatened “bullet in the back” should be resorted to as a means of ending my attempts to expose the official villainy in question, you, or others interested, in securing compensation for the destruction of our company’s rights, may be in a position to hand to the British Foreign Office a relatively complete history

of our case, and thereby insure the establishment of the justice of our cause before the Hague Tribunal, and in that way force the United States Government to pay suitable compensation.

Needless to say, I do not for a moment imagine that there is any likelihood of such anonymous threat being carried out. The International (El Paso) dam scheme is now as dead as Queen Anne, and it cannot be brought back to life; but when political dishonesty and official graft in high places ^{are} ~~in~~ in danger of exposure and punishment, violent means are sometimes employed in the hope of protecting the guilty.

On account of certain incriminating facts within his knowledge, and damaging documentary evidence in his possession, one of the most prominent lawyers of the Southwest was murdered near here only a few years ago and within a short distance of where I am now living in the mountains sixteen miles east of Las Cruces; and as I am now the only one who persists in demanding that General Anson Mills should be prosecuted for his criminal conduct in office, and as an investigation of the charges preferred against him in the petitions, signed by a large number of the leading citizens of New Mexico, would be sure to incriminate other officials at Washington, it is possible that interested parties might consider it worth while to get rid of me by some such means as my anonymous correspondent or correspondents threatened. Consequently, as it is within the realm of the possible that such a thing

may happen, it is but fair to the investors in the Elephant Butte enterprise, to my wife and children, and to those from whom I borrowed part of the money I expended in defense of our rights, that the facts essential to the establishment of the justice of our claim against the United States Government should be placed in the hands of someone, like yourself, in a position to bring them to the personal notice of Sir Edward Grey, and, if need be, to secure the support of the English press.

Trusting that the reasons given may serve as my excuse for wishing to burden you with the perusal of the foregoing lengthy statement,

Believe me, my Lord,

Faithfully yours,

(Signed) Nathan Boyd

(Receiver for The Rio Grande Irrigation & Land
Company, Limited,) Las Cruces, New Mexico,

July 25th, 1906.

To Lord Winterstoke

of Blagdon, England.

(From "The Washington Post.")

OUR HONESTY DOUBTED.

Why British Capitalists Boycott American Investments. Englishmen, from Experience, Have Reached the Conclusion that Our Laws Do Not Protect Foreign Investors.

EDITOR POST:

My attention has been called to your editorial of the 1st instant, referring to the extensive investment of English capital in Mexico, and incidentally commenting upon the large amount of American securities, State, county and municipal bonds, railway and other industrial stocks, and so forth, at one time held in Great Britain. The subject is an exceptionally important one, for, as you truly state, "the investment of English capital in this country has been as useful to the borrower as to the lender;" a fact many of our amateur political economists frequently ignore or fail to appreciate.

Recognizing the enlightened and independent spirit of *The Post* in dealing with subjects of national importance, I venture to suggest that the present trans-Atlantic "boycott" of American industrial and commercial securities demands much more attention, from the press of this country, than the subject has heretofore received.

The instances of State repudiation to which you refer cannot be held responsible for the widespread distrust, of American securities, now current abroad, for up to a few years ago the United States was an exceptionally favored field for the investment of foreign capital. Until recently foreign investors—British investors in particular—largely contributed to the financial support of all classes of American industrial and commercial undertakings. Latterly, however, American securities have become practically unmarketable in England. Of course, this does not apply to Government bonds, or to "gilt-edged" securities sponsored by American banking and financial houses of established repute.

ABANDONED FOR OTHER FIELDS.

It is true that London brokers, jobbers, and stock-exchange gamblers continue to use "American Rails" and so forth, as counters in their daily deals "on 'change;" but the *bona fide* British investor is no longer a factor in the market: American investments have been abandoned almost entirely in favor of those of Canada, Mexico, Argentina and other South American countries, South Africa and Australia.

The reason is painfully patent to any one familiar with the subject. It is due to the fact that, in a commercial and political sense, we are no longer considered honest. It is believed that the laws of this country do not properly protect foreign investors; that under our laws directors of public companies are not sufficiently responsible for good management. It is alleged that the history of foreign investments in Texas, Kansas, Missouri, etc., affords conclusive proof of our national bad faith; and it is a common conviction—and not without reason, if the history of the "Elephant Butte Dam case" may be taken as an illustration of our official methods—that ignorant, dishonest, and hostile legislation, or unwarranted litigation, may, possibly, in the future as in the past, depreciate or even invalidate the investors' security.

All new countries must, in the nature of things, depend upon monetary assistance from without for the development of their resources. Individuals, communities, and nations borrow, all justly claiming the right to borrow in the cheapest market. But, notwithstanding recognized economic laws—laws as clearly defined and as immutable as are the other natural forces—governing the relations of labor, capital, and national resources, ignorant and corrupt officials, both Federal and State, have repeatedly attempted to destroy, and not always without success, the rights of the foreign investor, regardless of the fact that much of America's wonderful progress would have been retarded half a century or more had it not been for the

powerful aid of foreign gold. The results, dear money, financial depression, and at times widespread disaster, manifest conditions of cause and effect, followed inevitably.

THE CRISIS OF 1893—'94.

The crisis of 1893-'94 was, largely, a result of the withdrawal of foreign capital from this country, chiefly from the Western States and Territories. It has been estimated that within two years over \$500,000,000.00 was called up. Fortunately, the agricultural prosperity of later years has, in a great measure, counteracted the effect of our legislative follies. Our natural resources are so vast that not even the dearth of cheap money in the West could wholly destroy that prosperity. Nevertheless, the evil has not been entirely counterbalanced by the natural conditions responsible for the increase of the country's wealth. Foreign investors have so largely withdrawn their capital, that American banks, mortgage companies, and other money-lending institutions, remain practically the only sources of monetary supply. American capitalists have been left without competitors; and the agricultural, mineral, and commercial industries of the country are at their mercy, especially in the Western States and Territories, where, notwithstanding the accumulation of wealth in the manufacturing States of the East, the rate of interest remains ruinously high.

It is a lamentable fact, perhaps not known to the majority of the American people, that, with certain isolated exceptions, every American enterprise, let its prospects and advantages be never so promising, is in Europe looked upon with suspicion. Commercial morality is, perhaps, the supreme test of national good faith; and it is this point of view that has to be appreciated in order to enable one to understand the significance of the almost universal belief abroad that American governments as such, and the American people as a people, cannot be trusted in business matters. It is no exaggeration to say that the average Englishman, the average English investor, is

more distrustful of American institutions (and more suspicious of American good faith) than he is of those of any other civilized nation. The British investor embarks his capital with confidence in commercial undertakings all over the civilized world; American investments alone are now discredited.

REGARDED AS LEGITIMATE PREY.

This widespread feeling of suspicion is based on a general conviction, though of recent growth, that an English investor rarely receives justice at the hands of American government officials, or in American courts. However unwarranted this belief may be, it is almost universal in Great Britain, where the investing public has become convinced that, throughout the United States, the foreign investor is considered to be legitimate prey.

It is needless to point out that this loss of national credit has cost the country many times the monetary price of the war with Spain. It is beside the question to say that United States bonds stand higher in the markets of the world than those of any other nation. Government credit is but a part of national credit: and the term national credit properly includes State, county and municipal credit, and the credit of the people collectively and individually. The nation's credit is as much a part of our national wealth as is the gold in the public treasury. Accepting Aristotle's definition of wealth, we may say that the wealth of the nation consists of those things the value of which is measured in money.

CREDIT HAS A MONETARY VALUE.

"Credit," says Daniel Webster, "is the vital air of modern commerce. It does more, a thousand times, to enrich nations than all the mines of the world. * * * Credit is to money what money is to articles of merchandise."

Gustave du Puynode says: "However productive have been the mines of Mexico and Peru, there is yet a discovery more precious for humanity, and which has already pro-

duced more wealth than that of America—that is, the discovery of credit.”

McLeod says: “It is false theories of credit, and the abuse of credit, that have produced the monetary cataclysms which have shaken nations to their foundations.”

TWO FORMS OF ROBBERY.

So long as a nation continues in a low state of civilization, the form of credit is represented by some material substance, but as a nation advances in civilization another form of credit is called into use, and becomes a part of, and adds immeasurably to, the nation's wealth. Money and credit are homogeneous quantities. Money is only the highest and most general form of credit.

We protest loudly against the fraud and theft lately revealed in the postal service. All honest men demand that the guilty be punished. But what of men who prostitute the legislatures and the legal tribunals of their country in dishonest attacks upon the rights of foreign investors, who invested their capital in this country in the belief that their legal rights and their securities would jealously be safeguarded by an honest people? What measure of condemnation is demanded for those men who, by sacrificing the fair reputation of their country in the interests of selfish and personal aims, rob the American people of the monetary support so necessary to their prosperity? One man is party to a fraud that robs the public treasury to the extent of a few thousand dollars, and he is justly condemned and punished; while another assists in robbing his countrymen of their credit to the extent of millions of dollars, sacrificing our national wealth and retarding progress to an almost measureless extent, and yet continues to enjoy the confidence of those responsible for his appointment to office. “A strange world, my masters!”

OUR RELATIONS WITH GREAT BRITAIN.

I take it that every right-thinking, native-born American looks forward to the time when the relations between

the United States and Great Britain will be friendly in every proper sense of the term. But let Secretaries of State and Ambassadors plan and intend never so wisely, no real and lasting friendship can be established between the peoples of the two countries so long as the business men, merchants, and others of Great Britain, believe that they cannot rely upon receiving just and honest treatment at the hands of American officials or depend upon the equity of American courts.

None so popular in Great Britain as are American Ambassadors. Our diplomatic representatives at the court of St. James and our high officials of state who visit Great Britain are wined, dined, and courted without end. Both policy of state and a large measure of good will for the American people prompt the cultivation of friendly relations with this country; but, nevertheless, British investors continue to "boycott" American commercial securities, and our Western industries languish in consequence. Even during the recent boom in American rails, etc., the British investor fought shy; his one ambition was to unload, so long as the New York market enabled him so to do. The remedy is obvious.

(Signed) Nathan Boyd.

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to correct the proofs of this, and
the printer made an awful
hash of my "copy."

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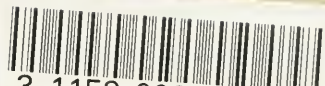
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